

6-18-2010

# Sadid v. Idaho State University Clerk's Record v. 3 Dckt. 37563

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**LAW CLERK**

Vol. 3 of 4

**Vol 3 of 3**

**IN THE  
SUPREME COURT  
OF THE  
STATE OF IDAHO**

HABIB SADID, an individual.

Plaintiff-Appellant, vs.

Idaho State University, Robert Wharton, Jack  
Kunze, Michael Jay Lineberry, Manoochehr

Aoghi, Richard Jacobsen, Gary Olson, Authur

Vailas and John/Jane Does I Through X, whose

True identities are presently unknown

Defendants - Respondents

Hon. David C. Nye District Judge

Appealed from the District Court of the Sixth  
Judicial District of the State of Idaho, in and for

Bannock County.

Ronald A. Coulter / Robert G. Te Feller

Attorney at Law

Attorney X For Appellant X

John A. Bailey, Jr.

Racine, Olson, Nye Budge & Bailey, Chartered

Attorney X For Respondent X

**FILED - COPY**

Filed this

2008

**JUN 18 2010**

day of

Clerk

Deputy

**37563**

**SEE AUGMENTATION  
RECORD**

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

HABIB SADID, an individual,	)	
	)	
Plaintiff/Appellant,	)	Supreme Court No. 37563-2010
	)	
v.	)	
	)	
IDAHO STATE UNIVERSITY,	)	
ROBERT WHARTON, JACK	)	
KUNZE, MICHAEL JAY	)	
LINEBERRY, MANOOCHER	)	
AOGHI, RICHARD JACOBSEN, GARY	)	
OLSON, AUTHUR VAILAS and	)	
JOHN/JANE DOES I through X, whose	)	
True identities are presently unknown,	)	
	)	
Defendants/Respondents,	)	
	)	
	)	

\_\_\_\_\_

Volume III

**CLERK'S RECORD**

Appeal from the District Court of the Sixth Judicial District of the State of  
Idaho, in and for the County of Bannock.

Before **HONORABLE David C. Nye**, District Judge.

For Appellant:

Ronaldo A. Coulter  
Robert G. Teffeteller  
Camacho, Mendoza, Coulter Law  
Group, PLLC

**776 E. Riverside Dr.  
Suite 200  
Eagle, Idaho 83616**

For Respondent:

**John A. Bailey, Jr.**  
**Racine, Olson, Nye, Budge & Bailey, Chartered**  
**P.O. Box 1391**  
**Pocatello, Idaho 83204-1391**

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## **VOLUME III**

Habib Sadid vs. Idaho State University, Michael Jay Lineberry

Date	Code	User		Judge
11/29/2008	LOCT	ELLA	SUPREME COURT APPEAL; Clerk's Vault.	Peter D. McDermott
	NCOC	ELLA	New Case Filed-Other Claims	Peter D. McDermott
	COMP	ELLA	Complaint Filed	Peter D. McDermott
	SMIS	ELLA	Summons Issued	Peter D. McDermott
		ELLA	Filing: A - Civil Complaint for more than \$1,000.00 Paid by: Johnson & Monteleone Receipt number: 0036267 Dated: 9/29/2008 Amount: \$88.00 (Check) For:	Peter D. McDermott
01/06/2008	ATTR	CAMILLE	Plaintiff: Sadid, Habib Attorney Retained Sam Johnson	Peter D. McDermott
10/31/2008	AFFD	CAMILLE	Affidavit of service - srvd on Arthur Vailas on 10-16-08	Peter D. McDermott
	AFFD	CAMILLE	Affidavit of service - srvd on Michael Lineberry on 10-20-08	Peter D. McDermott
	AFFD	CAMILLE	Affidavit of service - srvd on Brian Kane on 10-6-08	Peter D. McDermott
11/16/2008	NOAP	CAMILLE	Notice of Special Appearance ; aty John Bailey for Defs	Peter D. McDermott
	ATTR	CAMILLE	Defendant: Idaho State University Attorney Retained John A Bailey Jr	Peter D. McDermott
	ATTR	CAMILLE	Defendant: Lineberry, Michael Jay Attorney Retained John A Bailey Jr	Peter D. McDermott
11/24/2008	HRSC	CAMILLE	Hearing Scheduled (Jury Trial 09/15/2009 09:00 AM)	Peter D. McDermott
11/25/2008	NOTC	CAMILLE	Notice of intent to Take Default; aty Sam Johnson for plntf	Peter D. McDermott
11/26/2008	MOTN	CAMILLE	Motion to dismiss; aty John Bailey for defs	Peter D. McDermott
	MEMO	CAMILLE	Memorandum of Law in support of Motion to Dismiss; aty John Bailey for defs	Peter D. McDermott
12/3/2008	NOTC	CAMILLE	Notice of hearing; set for 12-15-08 at 1:30 pm: aty John Bailey for defs	Peter D. McDermott
12/5/2008	HRSC	CAMILLE	Hearing Scheduled (Motion 12/15/2008 01:30 PM)	Peter D. McDermott
12/8/2008	AFFD	CAMILLE	Affidavit of Service - srvd on Miren Artiach on 12-3-08	Peter D. McDermott
	MEMO	CAMILLE	Memorandum in Opposition to Defs Motion to Dismiss; aty Sam Johnson for plntf	Peter D. McDermott
1/13/2009	NOTC	CAMILLE	Notice of service - Plaintiffs First Set of Interrog and Req for Porduction of Documents to Def; aty Sam Johnson for plnt	Peter D. McDermott
1/26/2009		CAMILLE	Notice of Service of Defs First set of Interrog and REq for Production of Documents to Plaintiff; aty John Bailey, jr.	Peter D. McDermott
2/10/2009	NOTC	DCANO	Notice of Intent to Take Default; Sam Johnson, Atty for Plnts.	Peter D. McDermott

Habib Sadid vs. Idaho State University, Michael Jay Lineberry

Date	Code	User	Judge
2/12/2009		MARLEA	Filing: 17 - All Other Cases Paid by: Racine, olson nye budge Receipt number: 0005678 Dated: 2/12/2009 Amount: \$58.00 (Check) For: Lineberry, Michael Jay (defendant)
	ANSW	DCANO	Answer and Demand for Jury Trial; John A. Bailey, Jr. Atty for Dfdts.
3/5/2009	NOTC	CAMILLE	Notice of service of Defs Responses to Plaintiffs First set of Interrog and Requests for Production of Documents: aty John Bailey for Def.
3/25/2009	MOTN	CAMILLE	Motion to Compel Discovery; aty John Bailey for defs
	AFFD	CAMILLE	Affidavit of John Bailey, Jr. in Support of Motin to Compel Discovery; aty John Bailey for defs
	NOTC	CAMILLE	Notice of hearing; set for 4-13-09 @ 1:30 pm: aty John Bailey
4/1/2009		CAMILLE	Notice of Service - Plntfs Objections, Answers and REsponses to Defs First Set of Interrog and Req.
4/30/2009		CAMILLE	Notice of Depo of Habib Sadid on 6-2-09 @ 9am: aty John Bailey for defs
5/1/2009		CAMILLE	notice of service - Plntfs Objections and First Supplemental Rewponses to Defs First set of Req for Productio nof documents; aty Sam Johnson for plntf
5/6/2009		CAMILLE	Notice of Depo of Dr. Richard Jacobsen ; on 6-3-09 @ 9am: aty Sam Johnson for plntf
5/8/2009		CAMILLE	Notice of service - Plntfs Objections and Second Supplemental Responses to Defs First set of Req for Production of Documents; aty Sam Johnson for plntf
6/2/2009		CAMILLE	Notice of Service of Defs Supplemental Responses to Plaintiffs First set of Interrog and REquests for Production of documents; aty John Bailey for defs
6/4/2009		CAMILLE	Notice of Service - Plntfs Objections and Second Supplemental Answers to Defs First set of Interrog and Third Supplemental Responses to Defs First set of Req for Production of documents; aty Sam Johnson for plntf
6/8/2009		CAMILLE	Second Motion to Compel Discovery; aty John Bailey for defs
		CAMILLE	Affidavit of John Bailey , jr. in Support of Second Motion to Compel Discovery; aty John Bailey for defs
		CAMILLE	Notice of hearing; set for 6-22-09 @ 1:30 pm: aty John Bailey for def.
6/9/2009	HRSC	CAMILLE	Hearing Scheduled (Motion 06/22/2009 01:30 PM)

Habib Sadid vs. Idaho State University, Michael Jay Lineberry

Date	Code	User		Judge
6/22/2009		CAMILLE	Minute entry and order; Defs Second Motion to Compel Discovery is GRANTED: Plntf shall provide all documents requested no later than 6-26-09: J Mcdermott 6-22-09	Peter D. McDermott
6/23/2009		CAMILLE	Notice of Continued Deposition of Harib Sadid on 6-30-09 @ 9am: aty John Bailey for def	Peter D. McDermott
6/25/2009		CAMILLE	Notice of service - Plaintiffs Objections and Third Supplemental Answers to Defendants First set of Interrog and fourth Supplemental Responses to Defs First set of Req for Production of Documents: aty Sam Johnson for plntf	Peter D. McDermott
7/8/2009		CAMILLE	Second Notice of continued Depo of Habib Sadid on 7-17-09 @ 9am: aty John Bailey for Defs	Peter D. McDermott
7/16/2009		CAMILLE	Objection to Defs Request for Production of documents contained in defs second notice of continued depo of Habib Sadid; aty Sam Johnson for plntf	Peter D. McDermott
		CAMILLE	Notice of service - Plntfs Objection and fifth supplemental Responses to Defs first set of requests for productio of documents; aty Sam Johnson for plntf	Peter D. McDermott
7/22/2009		CAMILLE	Notice of service - Plntfs Objections and Sixth Supplemental Responses to Defs First set of Req. for Production of documents; aty Sam Johnson for plntf	Peter D. McDermott
7/29/2009	NOTC	AMANDA	Notice of Service; PA Johnson -- dfdt atty served Plt'f objections and seventh supplemental responses to dfdt's first set of requests for production of documents	Peter D. McDermott
8/4/2009		CINDYBF	Notice of Deposition of Dr. Subbaram Naidu- set 8-19-09 at 1:30 at office of John Bailey- by PA Johnson.	Peter D. McDermott
		CINDYBF	Notice of Deposition of Dr. Jay Kunze- at office of John Bailly 8-19-09 at 9:00 a.m.- by PA Johnson.	Peter D. McDermott
8/5/2009		CAMILLE	Motion to Vacate and Reset Trial; aty Sam Johnson for plntf	Peter D. McDermott
		CAMILLE	Order Vacating and Resetting Jury Trial; J Mcdermott 8-5-09	Peter D. McDermott
8/11/2009		CAMILLE	Notice of service - Plntfs Second set of Requests for Production of Documents to Def: aty Sam Johnson for plntf	Peter D. McDermott
8/27/2009	MOTN	AMYW	Motion to Amend Complaint; /s/ Sam Johnson, atty for Plaintiff	David C Nye
	NOTC	AMYW	Notice of Hearing; /s/ Sam Johnson, atty for Plaintiff	David C Nye
8/31/2009	ORDR	AMYW	Administrative Order of Reference reassigning matter to Judge Nye; /s/ J McDermott	Peter D. McDermott
9/9/2009		CAMILLE	Amended Notice of Hearing; set for 10-5-09 @ 9:30 am: aty Sam Johnson for plntf	David C Nye

Habib Sadid vs. Idaho State University, Michael Jay Lineberry

Date	Code	User	Judge
3/9/2009	HRSC	CAMILLE	Hearing Scheduled (Motion 10/05/2009 09:30 AM)
3/14/2009		CAMILLE	Motion for Summary Judgment; aty John Bailey for def
		CAMILLE	Memorandum in support of Motion for Summary Judgment; aty John Bailey for def
		CAMILLE	Affidavit of John Bailey Jr. in support of Motion for Summary Judgment; aty John Bailey for def
3/28/2009		CAMILLE	Plaintiffs Motin for Additional time to oppose summary Judgment pursuant to rule 56
		CAMILLE	Affidavit of Sam Johnson in Support of Plntfs Motion for Additional time to oppose summary Judgment pursuant to rule 56
		CAMILLE	Memorandum in Opposition to plntfs Motin to amend Complaint; aty John Bailey for defs
3/29/2009		CAMILLE	Notice of hearing on Plntfs motin for Additional time to oppose summary judgment pursuant to rule; set for 10-13-09 @ 10am: aty Sam Johnson for plntf
3/30/2009		CAMILLE	Reply Memorandum in support of Motin to Amend Complaint; aty Sam Johnson for plntf
10/2/2009	HRSC	CAMILLE	Hearing Scheduled (Motion for Summary Judgment 10/13/2009 10:00 AM)
		CAMILLE	Affidait of John Bailey Jr. in Opposition to Plntfs Motion for Additional time : aty JOhn Bailey for defs
		CAMILLE	Memorandum in Opposition to Plntfs Motion for Additional time ; aty John Bailey
10/5/2009	DCHH	AMYW	Hearing result for Motion held on 10/05/2009 09:30 AM: District Court Hearing Held Court Reporter: Stephanie Morse Number of Transcript Pages for this hearing estimated: Less than 100 pages.
	CONT	AMYW	Hearing result for Motion for Summary Judgment held on 10/13/2009 10:00 AM: Continued
		CAMILLE	Minute Entry and Order; on Plntfs motion to Amend the Complaint, the court will allow the Amended Complaint and will deem Defs Motion for Summary Judgment; Court will send its regular scheduling order for a new Trial schedule in this matter; J Nye 10-26-09
10/7/2009		CAMILLE	Amended Notice of Hering; set for 11-2-09 @ 10:00 am: aty John Bailey for defs
10/15/2009		CAMILLE	First Amended Complaint and Demand for Jury Trial; aty Sam Johnson for plntf
		CAMILLE	Plntfs Notice of Unavailable Dates; aty Sam Johnson:

Habib Sadid vs. Idaho State University, Michael Jay Lineberry

Date	Code	User		Judge
10/22/2009		CAMILLE	Defs Notice of Unavailable Dates; aty John Bailey for def	David C Nye
10/23/2009		CAMILLE	Notice of depo of Dr. Jay Kunze on 10-27-09 @ 1pm: aty Sam Johnson for plntf	David C Nye
		CAMILLE	Notice of depo of Michael Jay Lineberry on 10-28-09 @ 10am: aty Sam Johnson for plntf	David C Nye
10/30/2009		CAMILLE	Affidavit of Plntf in Oppositjion to Defs Motion for Summary Judgment; aty Sam Johnson for plntf	David C Nye
		CAMILLE	Plaintiffs Memorandum in Opposition to Defs Motion for Summary Judgment; aty Sam Johnson for plntf	David C Nye
		CAMILLE	Reply Affidavit of John Bailey Jr. Re: Defs Motion for Summary Judgment; aty John Bailey for def	David C Nye
		CAMILLE	Affidavit of counsel in Opposition to Defs Motion for Summary Judgment; aty John Bailey for def	David C Nye
		CAMILLE	Motion to Strike Affidavit of Habib Sadid; aty John Bailey	David C Nye
		CAMILLE	Memorandum in Support of Motin to strike Affidavit of Habib Sadid; aty John Bailey	David C Nye
	MOTN	DCANO	Motion To Shorten Time; John A. Bailey, Jr. Atty for Defendants	David C Nye
11/2/2009	MEOR	AMYW	Minute Entry and Order; parties appeared and court heard oral argument on MSJ, court took matter under advisement and will issue a decision in 30 days; /s/ J Nye, 11-2-09	David C Nye
12/7/2009	MEOR	AMYW	Minute Entry and Order; decision on MSJ will not be issued timely by 12/2 and will issued on or before 12/18; /s/ J Nye, 12-7-09	David C Nye
12/18/2009		CAMILLE	Decision on Motion fo rSummary Judgment; Plntfs counsel will have three days to file any objection proposed Judgment; J Nye 12-18-09	David C Nye
12/22/2009	DPWO	CAMILLE	Judgment, Plaintiffs complaint be dismissed w/prej; J 12-22-09	David C Nye
	CSTS	CAMILLE	Case Status Changed: Closed	David C Nye
12/24/2009		CAMILLE	Plaintiffs Motion for Reconsideration; aty Sam Johnson for plntf	David C Nye
		CAMILLE	Affidavit of Plntf in support of Motion for Reconsideration; aty Sam Johnson	David C Nye
12/30/2009		CAMILLE	Reply Memorandum Re: Defs Motion for Summary Judgmetn; aty John Bailey	David C Nye
		CAMILLE	Defendants Memorandum in support of Motion for Attorney Fees and Costs; aty John Bailey for def	David C Nye
		CAMILLE	Affidavit of John Bailey Jr. in support of Defs Motion for fees and Costs; aty John Bailey for def	David C Nye
		CAMILLE	Defendants Motion for Attorney Fees and Costs; aty JohnBailey for def	David C Nye

Habib Sadid vs. Idaho State University, Michael Jay Lineberry

Date	Code	User	Judge
12/30/2009		CAMILLE	Notice of hearing; RE: Defs Motion for Fees and Costs; set for 1-19-2010 @ 11am: aty John Bailey
1/4/2010	HRSC	CAMILLE	Hearing Scheduled (Hearing Scheduled 01/19/2010 09:00 AM)
	CSTS	CAMILLE	Case Status Changed: Closed pending clerk action
1/5/2010		CAMILLE	Memorandum in support of Plntfs Motin for Reconsideration; aty Sam Johnson for plntf
		CAMILLE	Notice of hearing; set for Motion for Reconsideration; on 1-19-2010 @ 11am: aty Sam Johnson
1/7/2010		CAMILLE	Plaintiffs Motion to Disallow Defs Request for Attys Fees and Costs; aty SamJohnson for plntf
1/11/2010		CAMILLE	Memorandum in Opposition to Defs Request for Attorney Fees and Costs; aty Sam Johnson for plnt
		CAMILLE	Defs Memorandum in Opposition to Plntfs Motion for Reconsideration RE: Decision on Motion for Summary Judgment; aty Joh Bailey for def
1/12/2010		CAMILLE	Affidavit of John Bailey Jr. in opposition to Plntfs Motion for Reconsideration; aty John Bailey for defs
1/14/2010	CONT	AMYW	Continued (Hearing Scheduled 01/19/2010 11:00 AM)
1/15/2010		CAMILLE	Plaintiffs Reply Memorandum in support of Motinfor Reconsideration; aty Sam Johnson for plntf
1/25/2010		CAMILLE	Minute Entry & Order; plntfs motion to reconsider taken under advisement: J Nye 1-25-2010
2/24/2010		CAMILLE	Decision on Motion for Reconsideration; (Court Denying the Plntfs Motion for Reconsideration) J Nye 2-24-2010
	CSTS	CAMILLE	Case Status Changed: closed
3/31/2010	APSC	DCANO	Appealed To The Supreme Court
	NOTC	DCANO	Notice of Appeal; John C. Lynn, Atty for Appellant.
	NOTC	DCANO	Notice of Association of Counsel; John C. Lynn Atty for Plaintiff. John C. Lynn gives notice to the Court and Counsel that he is associating with Same Johnson as Attorneys of record for the Plaintiff.
	ATTR	DCANO	Plaintiff: Sadid, Habib Attorney Retained John C Lynn



Habib Sadid vs. Idaho State University, Michael Jay Lineberry

Date	Code	User	Judge
3/31/2010		DCANO	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: John C. Lynn Receipt number: 0012117 Dated: 4/1/2010 Amount: \$101.00 (Check) For: Sadid, Habib (plaintiff)
4/1/2010	MISC	DCANO	Received \$101.00 check # 5020 for Filing Fee and Supreme Court Fee and \$100.00 Check 5019 for deposit for Clerk's Record on 3-31-10. 1
4/2/2010	MISC	DCANO	CLERK'S CERTIFICATE OF APPEAL MAILED TO COUNSEL, Same Johnson and John Lynn for Appellant and John A. Bailey for Respondent AND SUPREME COURT ON 4-2-10.
4/8/2010	MISC	DCANO	IDAHO SUPREME COURT; Notice of Appeal received in SC on 4-5-10. Docket Number 37563-2010. Clerk's Record and Reporter's Transcript due in Sc on 7-12-10. (6-7-10 5 weeks prior)
	MISC	DCANO	IDAHO SUPREME COURT; Clerk's Certificated received in SC on 4-5-10.
4/20/2010		DCANO	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Racine, Olson, Nye Receipt number: 0014545 Dated: 4/20/2010 Amount: \$101.00 (Check) For: Idaho State University (defendant) and Lineberry, Michael Jay (defendant)
	MISC	DCANO	\$101.00 FOR Cross Appeal check # 56482 paid on 4-20-10.
	MISC	DCANO	NOTICE OF CROSS APPEAL; John A. Bailey, Atty for Defendants/ Respondents.
	MISC	DCANO	CLERK'S CERTIFICATE OF CROSS APEAL; Signed and Mailed to Counsel and SC on 4-20-10.
	MISC	DCANO	NOTICE OF AMENDED CROSS APPEAL: John A. Bailey, Jr. Atty for Defendants. (requesting additional documents for Clerk's Record)
	MISC	DCANO	Received \$100.00 check # 56509 for down on Clerk's Record from Racine, Olson, Nye. (Cross Appeal)
4/23/2010	MISC	DCANO	IDAHO SUPREME COURT; Letter from Dorothy to John Bailey regarding request for Transcripts.
4/26/2010	MISC	DCANO	AMENDED NOTICE OF APPEAL; John C. Lynn, Atty. for Appellant. (requesting documents for Clerk's Record).
	MISC	DCANO	IDAHO SUPREME COURT; Notice of Cross Appeal received in SC on 4-22-10.
4/27/2010	MISC	DCANO	AMENDED CLERK'S CERTIFICATE OF APPEAL; Signed and Mailed to SC and Counsel on 4-27-10.

Date: 4/29/2010

**Sixth Judicial District Court - Bannock County**

User: DCANO

Time: 09:52 AM

ROA Report

Page 8 of 8

Case: CV-2008-0003942-OC Current Judge: David C Nye

Habib Sadid vs. Idaho State University, etal.

Habib Sadid vs. Idaho State University, Michael Jay Lineberry

Date	Code	User	Judge
4/27/2010	MISC	DCANO	AMENDED CLERK'S CERTIFICATE OF CROSS APPEAL; Signed and Mailed to SC and Counsel on 4-27-10. David C Nye
4/29/2010	MISC	DCANO	CLERK'S RECORD received in Court Records on 4-29-10. David C Nye

Sam Johnson  
JOHNSON & MONTELEONE, L.L.P.  
405 South Eighth Street, Suite 250  
Boise, Idaho 83702  
Telephone: (208) 331-2100  
Facsimile: (208) 947-2424  
[sam@treasurevalleylawyers.com](mailto:sam@treasurevalleylawyers.com)  
Idaho State Bar No. 4777

FILED  
BANNOCK COUNTY  
CLERK OF DISTRICT COURT

2009 DEC 24 PM 12:02

BY  DEPUTY CLERK

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT FOR THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

HABIB SADID, an individual,

Plaintiff,

v.

IDAHO STATE UNIVERSITY, ROBERT  
WHARTON, JAY KUNZE, MICHAEL  
JAY LINEBERRY, MANOOCHHEHR  
ZOGHI, RICHARD JACOBSEN, GARY  
OLSON, AUTHUR VAILAS and  
JOHN/JANE DOES I through X, whose  
true identities are presently unknown,

Defendants.

Case No. CV 2008-39420C

**PLAINTIFF'S MOTION FOR  
RECONSIDERATION**

COMES NOW Plaintiff, by and through his attorney of record, Sam Johnson of  
the law firm Johnson & Monteleone, L.L.P., and pursuant to 11(a)(2)(B) of the Idaho  
Rules of Civil Procedure, hereby moves this court for the following relief:

PLAINTIFF'S MOTION FOR RECONSIDERATION - 1





### **RELIEF SOUGHT**

1. An order reconsidering the grant of summary judgment on Plaintiff's claim for violation of his First Amendment right to freedom of speech brought pursuant to 42 U.S.C. § 1983 and pursuant to Article 1, Sections 9 and 10 of the Constitution of the state of Idaho.
2. An order reconsidering the apparent grant of summary judgment on Plaintiff's claim for violation of his First Amendment right to petition the courts for redress of grievances.
3. An order reconsidering the grant of summary judgment on Plaintiff's claim for breach of the employment contract and the covenant of good faith and fair dealing implied therein.

### **GROUND FOR RELIEF**

THIS MOTION as it pertains to the first item identified above is made and based upon the following grounds for relief:

The Court failed to analyze several published expressions made by Plaintiff, the subject matter of which allegedly involved protected speech and matters of concern to the public. It appears the Court limited its review to only two of the many First Amendment invoking articles attached to Exhibit "A" of the *First Amended Complaint* and the *Affidavit of Plaintiff In Opposition to Defendants' Motion for Summary Judgment*. See *Decision on Motion for Summary Judgment*, p. 9 of 25. For this reason, the Court should reconsider its ruling to include all publications before the Court.

THIS MOTION as it pertains to the second item identified above is made and based upon the following grounds for relief:

The Court failed to analyze whether the Defendants retaliated against Plaintiff for petitioning the Courts for redress of his grievances as expressly alleged in paragraphs 21 and 22 of the *First Amended Complaint* and incorporated into *Count One* by operation of paragraph 34 of the *First Amended Complaint*. For this reason, the Court should reconsider its ruling to include analysis of whether the Defendants are entitled to summary judgment on Plaintiff's claim for violation of his First Amendment right to petition the courts for redress of his grievances.

THIS MOTION as it pertains to the third item identified above is made and based upon the following grounds for relief:

The Court clearly misapplied the standard for reviewing motions for summary judgment when concluding ISU did not breach the employment contract as a matter of law. *See Decision on Motion for Summary Judgment, p. 17 of 25*. On the point of breach, the Court concluded, "However, Sadid received his tenure in 1993, and according to the ISU Faculty Handbook, annual evaluations of a tenured professor are not required." *See Decision on Motion for Summary Judgment, p. 16 of 25*. In reaching this conclusion, the Court has committed clear error.

First, the Court rejected a section of the Handbook favorable to Plaintiff which on its face compels the annual evaluation of "each faculty member in that department . . . ." This section of the Handbook unequivocally applies to each member of the faculty, not just "non-tenured members" of the faculty. Secondly, the Court acknowledges but then ignores the testimony of Defendant Kunze. As the Court noted, the very person responsible for conducting the annual evaluation admitted he did not do it in accordance with policy. Furthermore, Defendant Kunze also admitted he did not conduct the five (5)

year periodic, performance evaluation of Plaintiff. (*See Kunze's Deposition Transcript attached as Exhibit "A", to the Affidavit of Counsel, on record herein, pp. 57-58*). In light of these facts, summary judgment should have been entered in favor of Plaintiff on the issue of breach. Like it or not, this Court is bound to draw all reasonable inferences in favor of the non-moving party. *Porter v. Bassett*, 146 Idaho 399, 403 (2008). This Court did the opposite of what it is bound to do by rejecting the section of the Handbook favorable to Plaintiff and by side-stepping the testimony of Defendant Kunze on its way to ruling in favor of ISU. This is unprecedented to this author.

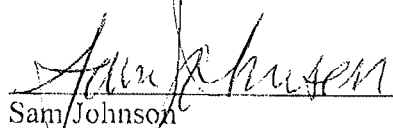
THIS MOTION is supported by the *Affidavit of Plaintiff in Support of Motion for Reconsideration*, filed contemporaneously herewith.

#### **ORAL ARGUMENT AND BRIEFING**

Plaintiff does desire to present oral argument on the motion pursuant to Rule 7(b)(3)(C), of the Idaho Rules of Civil Procedure; Plaintiff further intends to file a memorandum in support of this motion within fourteen (14) days pursuant to Rule 7(b)(3)(C), of the Idaho Rules of Civil Procedure;

DATED: This 24 day of December, 2009.

JOHNSON & MONTELEONE, L.L.P.

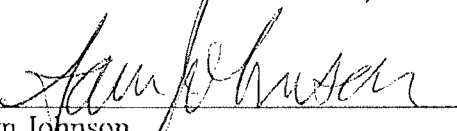
  
\_\_\_\_\_  
Sam Johnson  
Attorneys for Plaintiff

**CERTIFICATE OF MAILING, DELIVERY, OR FACSIMILE TRANSMISSION**

I CERTIFY that on December 24, 2009, I caused a true and correct copy of the foregoing document to be:

<input type="checkbox"/> mailed <input type="checkbox"/> hand delivered <input type="checkbox"/> CM/ECF Electronic Filing <input checked="" type="checkbox"/> transmitted fax machine to: (208) 232-6109	John A. Bailey, Jr. Racine Olson Nye Budge & Bailey, Chtd. 201 E. Center P. O. Box 1391 Pocatello, ID 83204-1391
--	--

JOHNSON & MONTELEONE, L.L.P.

  
\_\_\_\_\_  
Sam Johnson  
Attorney for Plaintiff

BANNOCK COUNTY  
CLERK OF DISTRICT COURT

2009 DEC 24 PM 12:02

BY  DEPUTY CLERK

Sam Johnson  
JOHNSON & MONTLEONE, L.L.P.  
405 South Eighth Street, Suite 250  
Boise, Idaho 83702  
Telephone: (208) 331-2100  
Facsimile: (208) 947-2424  
Idaho State Bar No. 4777

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT FOR THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

HABIB SADID, an individual

Plaintiff,

v. Case No. CY 2008-39420C

IDAHO STATE UNIVERSITY, ROBERT WHARTON, JAY KUNZE, MICHAEL LINEBERRY, MANOCHIEIR ZOGHI, RICHARD JACOBSEN, GARY OLSON, ALTHUR VAHLAS, and JOHN/JANE DOE'S 1 through X, whose true identities are presently unknown,

Defendants.

STATE OF IDAHO )

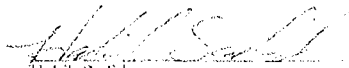
County of Bannock )

Habib Sadid, being first duly sworn, deposes and states:

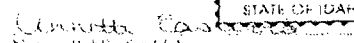
AFFIDAVIT OF PLAINTIFF IN SUPPORT OF MOTION FOR RECONSIDERATION - 1

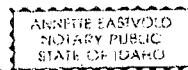


1. I am the Plaintiff in the above-referenced matter, and make this Affidavit based upon my own personal knowledge.
2. Based upon the grant of my tenure in 1994, I should have received a five-year post tenure periodic review in year 2004. This did not take place. In fact, I have not received such an evaluation since 1999.
3. Both the annual and the five (5) year evaluations are used by ISU to assist in determining the amount of salary increases for tenured faculty members and to assist in determining a faculty members eligibility for academic promotions.
4. Your affiant sayeth naught.

  
Habib Sadik

Subscribed and sworn to before me, this 28<sup>th</sup> day of December, 2009.

  
Notary Public for Idaho  
Residing at Bozeman, Montana  
My Commission Expires 5/6/2013



**CERTIFICATE OF MAILING, DELIVERY, OR FACSIMILE TRANSMISSION**

I CERTIFY that on December 24, 2009, I caused a true and correct copy of the foregoing document to be:

<input type="checkbox"/> mailed <input type="checkbox"/> hand delivered <input type="checkbox"/> CM/ECF Electronic Filing <input checked="" type="checkbox"/> transmitted fax machine to: (208) 232-6109	John A. Bailey, Jr. Racine Olson Nye Budge & Bailey, Chtd. 201 E. Center P. O. Box 1391 Pocatello, ID 83204-1391
--	--

JOINSON & MONTELEONE, L.L.P.



Sam Johnson  
Attorney for Plaintiff

ORIGINAL

John A. Bailey, Jr. (ISB No. 2619)  
RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED  
P.O. Box 1391  
Pocatello, Idaho 83204-1391  
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Fax: (208) 232-6109

*Attorney for Defendants*

2008 DEC 30 PM 4:00  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF BANNOCK

HABIB SADID, an individual, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
IDAHO STATE UNIVERSITY, )  
ROBERT WHARTON, JAY KUNZE, )  
MICHAEL JAY LINEBERRY, )  
MANOOCHHEHR ZOGHI, RICHARD )  
JACOBSEN, GARY OLSON, )  
ARTHUR VAILAS and JOHN/JANE )  
DOES I THROUGH X, whose true )  
identities are presently unknown, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Case No. CV 2008-3942-OC

**DEFENDANTS' MEMORANDUM  
IN SUPPORT OF MOTION  
FOR ATTORNEY FEES AND COSTS**

COME NOW, Defendants Idaho State University, Robert Wharton, Jay Kunze, Michael Jay Lineberry, Manoochehr Zoghi, Richard Jacobsen, Gary Olson, and Arthur Vailas, by and through counsel of record John A. Bailey, Jr. Of the Firm Racine, Olson, Nye, Budge & Bailey, Chartered, and submit this Memorandum in Support of Motion for Attorney Fees and Costs as follows:

**DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEY FEES AND COSTS - 1**

## I.

### INTRODUCTION

On December 18, 2009 the Court entered its Decision on Motion for Summary Judgment granting Defendants' Motion for Summary Judgment in its entirety. Specifically, the Court granted Defendants' Motion for Summary Judgment on each count alleged in the Plaintiff's Amended Complaint; namely, (1) count one- claim under §1983; (2) count two- breach of employment contract and implied covenant of good faith and fair dealing; and, (3) count three- defamation. As the prevailing parties on all of the Plaintiff's claims, Defendants are entitled to seek an award of attorney fees based upon several alternative statutory provisions including 42 U.S.C. §1988, I.C. §6-918A, I.C. §12-121, and/or I.C. §12-120(3).<sup>1</sup> Therefore, each of these statutory provisions entitling Defendants, as the prevailing parties, to attorney fees will be discussed in more detail below.

## II.

### LEGAL AUTHORITY

To begin, 42 U.S.C. §1988 allows courts to award the prevailing party attorney fees in actions seeking to enforce 42 U.S.C. §1983 claims. *Nation v. State*, 144 Idaho 177, 158 P.3d 953 (2007); *see also Willie v. Board of Trustees*, 138 Idaho 131, 137, 59 P.3d 302, 308 (2002); citing 42 U.S.C. §1988(b); *Farrar v. Hobby*, 506 U.S. 103, 111-12, 121 L.Ed.2d 494, 113 S. Ct. 566 (1992). Prevailing defendants are entitled to attorney fees under §1988 where the action is "unreasonable, frivolous, meritless, or vexatious". *Karr v. Bermeosolo*, 142 Idaho 444, 449, 129 P.3d 88, 93 (2005). To meet this standard, the plaintiff's action must be "groundless or without

---

<sup>1</sup>In addition to attorney fees allowable to Defendants under the relevant statutory provisions discussed herein, the Affidavit of John A. Bailey, Jr. in Support of Defendants' Motion for Fees and Costs provides the basis for an award of costs to Defendants in the amount of \$2,867.95 for costs as a matter of right, and \$60.00 for discretionary costs, pursuant to I.R.C.P. 54 (d)(1).

foundation”. *Hughes v. Rowe*, 449 U.S. 5, 14, 101 S. Ct. 173, 66 L.Ed.2d 163 (1980); *see also Franceschi v. Schwartz*, 57 F.3d 828, 832 (9<sup>th</sup> Cir. 1995)(awarding attorney fees against attorney representing himself who should have known the defendants were immune and failed to show any reason why immunity should not apply). Generally, awards of attorney fees pursuant to 42 U.S.C. §1988 are reviewed for an abuse of discretion standard. *Miller v. Ririe Joint School Dist. No. 252*, 132 Idaho 385, 973 P.2d 156 (1999); citing *Shields v. Martin*, 109 Idaho 132, 141, 706 P.2d 21, 30 (1985).

Next, I.C. §6-918A allows the Court to award “appropriate and reasonable attorney fees” to the “claimant, the governmental entity, or the employee of such governmental entity, as costs, in actions under this act, upon petition therefore and a showing, by clear and convincing evidence, that the party against whom or which such award is sought was guilty of bad faith in the commencement, conduct, or maintenance or defense of the action.” *Nation v. State*, 144 Idaho 177, 158 P.3d 953 (2007); *see also Cordova v. Bonneville County Joint Sch. Dist. No. 93*, 144 Idaho 637, 643, 167 P.3d 774, 780 (2007); *Athay v. Stacey*, 146 Idaho 407, 413, 196 P.3d 325, 331 (2008).

Additionally, both I.C. §12-117 and 12-121 permit the award of attorney’s fees to the prevailing party if the court determines that the case was brought, pursued or defended frivolously, unreasonably, or without foundation. *Nation v. State*, 144 Idaho 177, 158 P.3d 953 (2007); *see also Karr v. Bermeosolo*, 142 Idaho 444, 129 P.3d 88 (2005); *Gibson v. Ada County*, 142 Idaho 746, 133 P.3d 1211 (2006). In *Gibson v. Ada County*, *supra*, the court noted that Idaho State University was not entitled to attorney fees under I.C. §12-117 because it was not a “state agency” within the meaning of that statute. However, the *Gibson* court made clear that a

“party”, under I.C. §12-121 includes the State of Idaho and all its political subdivisions. 142 Idaho 746, 133 P.3d 1211 (2006).

Finally, under Idaho Code §12-120(3), the prevailing party in a civil action involving a commercial transaction based on a contract is entitled to an award of reasonable attorney fees. *Willie v. Board of Trustees*, 138 Idaho 131, 137, 59 P.3d 302, 308 (2002). The test for whether a commercial transaction is involved in a claim is whether a commercial transaction is the gravamen of the claim. *Id.*; citing *Brower v. E.I. DuPont De Nemours & Co.*, 117 Idaho 780, 784, 792 P.2d 345, 349 (1990). Actions brought for breach of an employment contract are considered commercial transactions and are subject to the attorney fee provision of I.C. §12-120(3). *Id.*; citing *Northwest Bec-Corp. v. Home Living Servs.*, 136 Idaho 835, 41 P.3d 263 (2002).

When several statutory provisions appear to apply to the grant of attorney fees, the specific controls over the general. *Shay v. Cesler*, 132 Idaho 585, 977 P.2d 199 (1999); citing *K. Hefner, Inc. v. Caremark, Inc.*, 128 Idaho 726, 732, 918 P.2d 595, 601 (1996); *Roe v. Harris*, 128 Idaho 569, 572, 917 P.2d 403, 406 (1996).

### III.

#### ARGUMENT

It is apparent from the pleadings, affidavits, and the entire record herein that the gravamen of the Plaintiff's suit was on a commercial transaction, and that Defendants are principally entitled to attorney fees under I.C. §12-120(3), as this statute most specifically

controls this controversy.<sup>2</sup> While the Plaintiff seemingly couched his action as one for unconstitutional retaliation, his proffered evidence of retaliation related to grievances he had under his employment contract with ISU. All of the Plaintiff's cited indicia of retaliation surrounded alleged violations of his contractual and legal rights as a public employee for ISU, not in his capacity as a private citizen.<sup>3</sup>

Specifically, the Plaintiff alleged that Defendants, acting at all times within the course and scope of their employment for ISU, and in derogation of his contractual rights, retaliated against him by: (1) failing to perform annual performance evaluations; (2) not providing him adequate salary increases; (3) failing to award him the Chair position; (4) harming his professional reputation as a tenured professor at ISU by the email sent by Defendant Michael Jay Lineberry; (5) suspending him from employment with ISU, admittedly with pay. The thrust of the Plaintiff's suit was to establish Defendants' derogation of his contractual rights by asserting shifting and unsubstantiated reasons for Defendants' alleged wrongdoing.<sup>4</sup> As the gravamen of Plaintiff's suit was for breach of his employment contract, Defendants should be granted attorney fees under I.C. §12-120(3).

---

<sup>2</sup> *Willie v. Board of Trustees*, supra, demonstrates that actions brought for breach of an employment contract are considered commercial transactions and are subject to the attorney fee provision of I.C. §12-120(3).

<sup>3</sup> As the Court correctly noted throughout its Decision on Motion for Summary Judgment, the Plaintiff's alleged "protected speech" giving rise to his retaliation claim under 42 U.S.C. §1983 went only to an internal administrative dispute and was done by the Plaintiff as a public employee for ISU. See Decision on Motion for Summary Judgment at Pgs. 6, 7, 9, 11, 12 and 13.

<sup>4</sup> As the Court highlighted in its Decision on Motion for Summary Judgment, the Plaintiff originally alleged that ISU retaliated against him and discriminated against him since 2001 for his national origin and/or his religion when he filed his EEOC charge. See Pg. 5 of the Decision on Motion for Summary Judgment. Next, the Plaintiff argued that it was his "protected speech" which motivated Defendants to retaliate against him in the original Complaint. Then the Plaintiff claimed that it was his action in filing suit that motivated the Defendants to retaliate against him in his Amended Complaint.

Alternatively, Defendants are entitled to an award of attorney fees under 42 U.S.C. §1988 because the Plaintiff's 42 U.S.C. §1983 claims were clearly "unreasonable, frivolous, meritless, and vexatious". The Plaintiff knew, or should have known, that his claims were time-barred, that his speech was not constitutionally protected, that Defendants were immune, and that his due process claim was not actionable. Despite this knowledge, the Plaintiff forged full force ahead against ISU and Defendant Michael Jay Lineberry and also added several other Defendants after months of litigation had ensued in their absence and where no showing was made that the individual Defendants acted pursuant to a policy of ISU. Based upon these factors, as well as the reasoning of *Franceschi v. Schwartz*, supra, Defendants should be awarded attorney fees under §1988.

Additionally, I.C. §6-918A provides an another alternative justification for the grant of attorney fees to Defendants because the Plaintiff was undoubtedly guilty of bad faith in the commencement, conduct, and maintenance of this tort action for defamation where he knew he had not filed a timely notice of tort claim, which was a condition precedent to filing suit, and to avoid summary judgment he claimed that he had filed a timely notice of tort claim where he did not. Under the precedent set forth above, and the facts of this case, Defendants are entitled to an award of attorney fees under I.C. §6-918A.

Finally, I.C. §12-121 also provides an appropriate alternative ground for the grant of attorney fees to Defendants. Again, this provision permits the award of attorney's fees to the prevailing party if the court determines that the case was brought, pursued or defended frivolously, unreasonably, or without foundation. See *Nation v. State*, supra, and *Gibson v. Ada County*, supra. As the Plaintiff knew, or should have known, that his claims were time-barred,



barred by immunity, unsupported by fact or law, and made in contravention of the ITCA, he brought and pursued his case frivolously, unreasonably and without foundation. As such, Defendants are entitled to an award of attorney fees under I.C. §12-121.

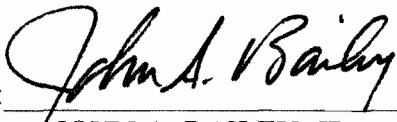
**IV.**

**CONCLUSION**

Based upon the foregoing points and authorities, Defendants' Motion for Attorney Fees and Costs and the Affidavit of John A. Bailey, Jr. in Support of Motion for Attorney Fees and Costs, Defendants respectfully request that the Court grant Defendants' attorney fees reasonably incurred in the defense of this matter as the prevailing parties on all counts alleged by the Plaintiff.

DATED this 30 day of December, 2009

RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED


By:   
JOHN A. BAILEY, JR.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 30 day of December, 2009, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Sam Johnson  
JOHNSON & MONTELEONE, L.L.P.  
405 South Eighth Street, Suite 250  
Boise, Idaho 83702

☐ U. S. Mail  
Postage Prepaid  
☐ Hand Delivery  
☐ Overnight Mail  
☒ Facsimile (208) 947-2424

  
\_\_\_\_\_  
JOHN A. BAILEY, JR.

ORIGINAL

John A. Bailey, Jr. (ISB No. 2619)  
RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED  
P.O. Box 1391  
Pocatello, Idaho 83204-1391  
Telephone: (208) 232-6101  
Fax: (208) 232-6109

*Attorney for Defendants*

FILED  
BANNOCK COUNTY  
CLERK

2008 DEC 30 PM 4:00

DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF BANNOCK

HABIB SADID, an individual, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
IDAHO STATE UNIVERSITY, )  
ROBERT WHARTON, JAY KUNZE, )  
MICHAEL JAY LINEBERRY, )  
MANOOCHEHR ZOGHI, RICHARD )  
JACOBSEN, GARY OLSON, )  
ARTHUR VAILAS and JOHN/JANE )  
DOES I THROUGH X, whose true )  
identities are presently unknown, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Case No. CV 2008-3942-OC

**AFFIDAVIT OF JOHN A. BAILEY, JR.  
IN SUPPORT OF DEFENDANTS'  
MOTION FOR FEES AND COSTS**

STATE OF IDAHO )  
 : ss.  
County of Bannock )

JOHN A. BAILEY, JR., being first duly sworn, deposes and states as follows:

1. That your affiant is a member of the law firm of Racine, Olson, Nye, Budge & Bailey, Chartered and served as counsel for Defendants Idaho State University, Robert Wharton, Jay Kunze, Michael Jay Lineberry, Manoochehr Zoghi, Richard Jacobsen, Gary Olson, and Arthur Vailas in the above-captioned action.

**AFFIDAVIT OF JOHN A. BAILEY, JR. IN SUPPORT OF DEFENDANTS' MOTION FOR FEES AND COSTS - 1**

2. That your affiant has personal knowledge of the commencement, progress, and resolution of the above-captioned action, and, therefore, is familiar with the costs and expenses incurred in this action by the Defendants.

3. That your affiant has reviewed the attached time and costs records of Racine, Olson, Nye, Budge & Bailey, Chartered, maintained in the above-captioned matter, on behalf of the Defendants. Further, those time records represent items of costs and attorney's fees that were reasonably and necessarily incurred in the prosecution of the defense of this action by Defendants.

4. All costs and attorney's fees submitted herewith were necessarily and reasonably incurred in the representation of the Defendants in the above-entitled action. To the best of my knowledge and belief, these items of costs and fees are correct and in compliance with IRCP 54.

**Costs and Fees Incurred**

5. The costs of right incurred in this action on behalf of the Defendants are as follows:

- a. Filing fee of **\$58.00**;
- b. Charges for transcripts of depositions taken in preparation for trial; specifically, deposition of Richard T. Jacobsen in the amount of **\$345.75**, depositions of Habib Sadid Volumes I, II, and III in the combined amount of **\$2,123.07**, deposition of Michael Jay Lineberry in the amount of **\$127.80**, and deposition of Jay F. Kunze in the amount of **\$213.33**.

**TOTAL COSTS OF RIGHT:      \$2,867.95<sup>1</sup>**

---

<sup>1</sup>See Racine, Olson, Nye, Budge and Bailey Chartered Summary Fee Transaction File List attached as Exhibit 1 which summarizes all costs and fees reasonably incurred in the defense of this action.

6. Discretionary costs incurred to obtain the faculty/senate tape copies from Channel 12 in the amount of **\$60.00**.

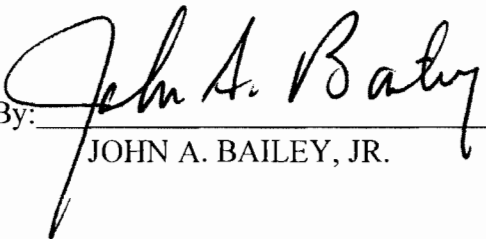
**TOTAL DISCRETIONARY COSTS: \$60.00<sup>2</sup>**

7. During the course of proceedings before the district court, attorney's fees were incurred as follows: Attorney John A. Bailey, for a total of 233.90 hours, at an hourly rate of \$125.00 per hour; and attorney Carol Tippi Volyn, for a total of 99.40 hours, at an hourly rate of \$100.00 per hour; and attorney David Alexander, for a total of 54.10 hours, at an hourly rate of \$100.00 per hour; and attorney Richard A. Hearn, for a total of 4.50 hours, at an hourly rate of \$100.00 per hour; and attorney Justin R. Ellis, for a total of 10.20 hours, at an hourly rate of \$100.00 per hour; and attorney Scott J. Smith, for a total of .50 hours, at an hourly rate of \$100.00 per hour; FOR A TOTAL ATTORNEY'S FEE OF **\$44,799.50**; plus paralegal fees, for a total of 136.60 hours, at an hourly rate of \$55.00 per hour, FOR A TOTAL PARALEGAL FEE OF **\$7,512.50**; all of which are reasonable rates and hours for the services of counsel and of the paralegals, based upon their relative experience and expertise, in the defense of this action.

**TOTAL FEES: \$52,312.00.<sup>3</sup>**

DATED this 30 day of December, 2009.

RACINE, OLSON, NYE, BUDGE &  
BAILEY, CHARTERED

By:   
JOHN A. BAILEY, JR.

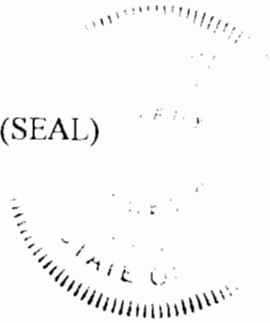
---

<sup>2</sup>See Exhibit 1.

<sup>3</sup>See *Id.*

SUBSCRIBED AND SWORN TO before me this 30 day of December, 2009.

(SEAL)



Mandy Chase  
NOTARY PUBLIC FOR IDAHO

Residing at: Pocatello

My Commission Expires: 5.8.2012

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 30 day of December, 2009, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Sam Johnson  
JOHNSON & MONTELEONE, L.L.P.  
405 South Eighth Street, Suite 250  
Boise, Idaho 83702

☐ U. S. Mail  
Postage Prepaid  
☐ Hand Delivery  
☐ Overnight Mail  
☒ Facsimile (208) 947-2424

John A. Bailey, Jr.  
JOHN A. BAILEY, JR.

**AFFIDAVIT OF JOHN A. BAILEY, JR. IN SUPPORT OF DEFENDANTS' MOTION FOR FEES AND COSTS - 4**

# Exhibit 1

SADID V ISU AND LINEBERRY  
12/21/2009

**Summary Fee Transaction File List**  
RACINE, OLSON, NYE, BUDGE AND BAILEY CHARTERED

	<b>Attorney</b>	<b>Hours</b>	<b>Rate</b>	<b>Amount</b>	
Total for Attorney	JAB Billable	233.9	\$ 125.00	\$ 27,929.50	JOHN A. BAILEY, JR.
Total for Paralegal	PM Billable	136.5	\$ 55.00	\$ 7,507.00	PAM MOTTISHAW
Total for Attorney	JRE Billable	10.2	\$ 100.00	\$ 1,020.00	JUSTIN R. ELLIS
Total for Attorney	SJS Billable	0.5	\$ 100.00	\$ 50.00	SCOTT J. SMITH
Total for Paralegal	BKH Billable	0.1	\$ 55.00	\$ 5.50	BONNIE K. HILL
Total for Attorney	CTV Billable	99.4	\$ 100.00	\$ 9,940.00	CAROL TIPPI VOLYN
Total for Attorney	RAH Billable	4.5	\$ 100.00	\$ 450.00	RICHARD A. HEARN
Total for Attorney	DEA Billable	54.1	\$ 100.00	\$ 5,410.00	DAVID ALEXANDER

<b>Billable</b>	<b><u>529.2</u></b>	<b><u>\$ 52,312.00</u></b>	<b>GRAND TOTALS</b>
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**Detail Cost Transaction File List**  
RACINE, OLSON, NYE, BUDGE AND BAILEY CHARTERED

Client	Date	Amount	Description
0.0036519	2/11/2009	\$ 58.00	FILING FEE - ANSWER
0.0036519	6/12/2009	\$ 345.75	DEPOSITION OF RICHARD T. JACOBSEN
0.0036519	6/12/2009	\$ 1,016.69	DEPOSITION OF HABIB SADID - VOLUME I
0.0036519	6/12/2009	\$ 113.75	DEPOSITION OF HABIB SADID - VOLUME II
0.0036519	8/3/2009	\$ 992.63	DEPOSITION OF HABIB SADID - VOLUME III
0.0036519	8/7/2009	\$ 60.00	FACULTY SENATE TAPE COPIES FROM CHANNEL 12 - PPATV
0.0036519	11/3/2009	\$ 127.80	DEPOSITION OF MICHAEL JAY LINEBERRY, PHD
0.0036519	11/3/2009	\$ 213.33	DEPOSITION OF JAY F. KUNZE, PHD
		<u>\$ 2,927.95</u>	GRAND TOTAL

ORIGINAL

John A. Bailey, Jr. (ISB No. 2619)  
RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED  
P.O. Box 1391  
Pocatello, Idaho 83204-1391  
Telephone: (208) 232-6101  
Fax: (208) 232-6109

*Attorney for Defendants*

FILED  
BANNOCK COUNTY  
CLERK  
2009 DEC 30 PM 4:00

DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF BANNOCK

HABIB SADID, an individual, )  
)  
Plaintiff, )  
)  
vs. )  
)  
IDAHO STATE UNIVERSITY, )  
ROBERT WHARTON, JAY KUNZE, )  
MICHAEL JAY LINEBERRY, )  
MANOOCHEHR ZOGHI, RICHARD )  
JACOBSEN, GARY OLSON, )  
ARTHUR VAILAS and JOHN/JANE )  
DOES I THROUGH X, whose true )  
identities are presently unknown, )  
)  
Defendants. )  
\_\_\_\_\_ )

Case No. CV 2008-3942-OC

**DEFENDANTS' MOTION  
FOR ATTORNEY FEES AND  
COSTS**

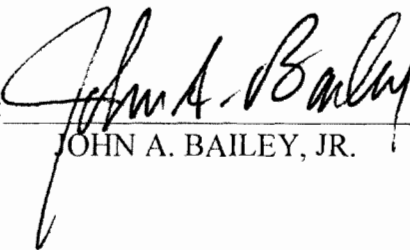
COME NOW, Defendants Idaho State University, Robert Wharton, Jay Kunze, Michael Jay Lineberry, Manoochehr Zoghi, Richard Jacobsen, Gary Olson, and Arthur Vailas, by and through counsel of record John A. Bailey, Jr. Of the Firm Racine, Olson, Nye, Budge & Bailey, Chartered, and move the Court for an award of costs and attorney fees incurred in the defense of the above captioned action. This motion is made pursuant to the Idaho Rules of Civil Procedure, Idaho Code §§12-120 (3), 12-121, 6-918A, and 42 U.S.C. §1988 on the grounds that the Defendants are the

**DEFENDANTS' MOTION FOR ATTORNEY FEES AND COSTS - 1**

prevailing parties on all counts of this action. This motion is supported by the Memorandum in Support of Motion for Attorney Fees and Costs and the Affidavit of John A. Bailey, Jr. filed herewith.

DATED this 30 day of December, 2009

RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED

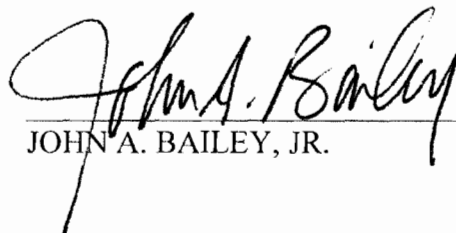
By:   
JOHN A. BAILEY, JR.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 30 day of December, 2009, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Sam Johnson  
JOHNSON & MONTELEONE, L.L.P.  
405 South Eighth Street, Suite 250  
Boise, Idaho 83702

[ ] U. S. Mail  
Postage Prepaid  
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JOHN A. BAILEY, JR.

Sam Johnson  
 JOHNSON & MONTELEONE, L.L.P.  
 405 South Eighth Street, Suite 250  
 Boise, Idaho 83702  
 Telephone: (208) 331-2100  
 Facsimile: (208) 947-2424  
[sam@treasurevalleylawyers.com](mailto:sam@treasurevalleylawyers.com)  
 Idaho State Bar No. 4777

CLERK OF DISTRICT COURT  
 2010 JAN -5 PM 5:01  
 BY *[Signature]*  
 DEPUTY CLERK

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT FOR THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

HABIB SADID, an individual,

Plaintiff,

v.

IDAHO STATE UNIVERSITY, ROBERT  
 WHARTON, JAY KUNZE, MICHAEL  
 JAY LINEBERRY, MANOOCHHEHR  
 ZOGHI, RICHARD JACOBSEN, GARY  
 OLSON, AUTHUR VAILAS and  
 JOHN/JANE DOES I through X, whose  
 true identities are presently unknown,

Defendants.

**Case No. CV 2008-39420C**

**MEMORANDUM IN SUPPORT OF  
 PLAINTIFF'S MOTION FOR  
 RECONSIDERATION**

**INTRODUCTION**

This matter comes before the Court on Plaintiff Habib Sadid's (hereinafter "Professor Sadid") motion for reconsideration of the *Decision on Motion for Summary Judgment*, dated December 18, 2009. In its decision, the Court concluded, "Defendants

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR RECONSIDERATION - 1

are entitled to summary judgment on each count in the [First] Amended Complaint.” See *Decision on Motion for Summary Judgment*, p. 24 of 25. On December 24, 2009, Professor Sadid filed *Plaintiff’s Motion for Reconsideration*, seeking re-examination of the summary dismissal of Count One of the First Amended Complaint involving claims brought under 42 U.S.C § 1983, and Count Two of the First Amended Complaint involving the claim for breach of the employment contract and the covenant of good faith and fair dealing. Professor Sadid has not and does not seek reconsideration of the grant of summary judgment on the tort claim - Count Three. Professor Sadid now submits this memorandum in support of *Plaintiff’s Motion for Reconsideration*.

### **ARGUMENT**

#### **A. Professor Sadid’s 42 U.S.C. § 1983 Claim of Protected Speech.**

It appears the Court limited its review to only two (2) of the many publications contained in the record when determining Professor Sadid’s First Amendment rights had not been violated. See *Decision on Motion for Summary Judgment*, p. 9 of 25. However, there are eleven (11) articles allegedly comprising protected speech by embracing matters of public concern, attached as Exhibit “A” to the *First Amended Complaint* and the *Affidavit of Plaintiff In Opposition to Summary Judgment*. Accordingly, Professor Sadid asks the Court to reconsider its First Amendment analysis by applying the proper constitutionally derived test to the remaining expressions of record, to wit:

1. Article published in the Idaho State Journal, titled: ‘Crisis of Confidence’ ISU faculty group voices no confidence in president;
2. Article published in the Saturday, March 15, 2003, edition of the Idaho State Journal, titled: ISU professor plans informal vote of

confidence – Sadid attempts to gauge faculty support for the university's administrators.

3. Article published in the February 11, 2003, edition of the Idaho State Journal, titled: Professor seeks vote of confidence – Sadid unhappy with ISU administration.
4. Letter published in September 26, 2005, edition of the Idaho State Journal addressing the departure of former ISU President Bowen and calling for a new, transparent accounting system for ISU.
5. Article published in the Idaho State Journal, titled: ISU professor files complaints.
6. Article published in the Idaho State Journal, titled: Valuing freedom of speech – ISU prof says it's important to speak out.
7. Article published in the Sunday, September 9, 2007, edition of the Idaho State Journal, titled: What's ISU need to do to improve research?
8. Letter to Editor of the Idaho State Journal, dated January 17, 2008.
9. Article published in the Sunday, November 16, 2008, edition of the Idaho State Journal, titled: Arc President Vailas' policies damaging ISU?

In determining the protected status of the expressions outlined above, the Court should apply the test used in the realm of academia relating to scholarship rather than the framework designed for non-academically related speech taken from *Garcetti v.*

*Ceballos*, 547 U.S. 410 (2006), and by extension from *Eng v. Cooley*, 552 F.3d 1062 (9<sup>th</sup> Cir. 2009). In fact, the majority opinion in *Garcetti* notes:

There is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court's customary employee-speech jurisprudence. We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching.

*Garcetti*, 547 U.S. at 425 (emphasis added).

Simply put, the Court should not have applied wholesale the rule from *Garcetti* and *Eng*. Rather, the Court should apply the legal framework for analyzing speech in the academic setting – the *Pickering-Connick*<sup>1</sup> balancing test used by the Idaho Supreme Court in *Karr v. Bermeosolo*, 142 Idaho 444 (2005). Under this framework, a four-part test exists for determining whether the speech enjoins disciplining an employee:

First, the court must determine whether the speech may be fairly characterized as constituting speech on a matter of public concern. If the speech involves a matter of public concern, then the court must balance the employee's interest in commenting upon matters of public concern against the interest of the state, as an employer, in promoting the efficiency of the public services it performs. Third, if the balance favors the employee, then the employee must show that the protected speech was a substantial or motivating factor in the detrimental employment decision. Finally, if the employee meets this burden, then the employer is required to show by a preponderance of the evidence that it would have reached the same decision even in the absence of the protected speech.

*Fridenstine v. Idaho Dep't. of Admin.*, 133 Idaho 188, 194, 983 P.2d 842, 848 (1999) (quoting *Lockhart v. State, Dept. of Fish & Game*, 127 Idaho 546, 552, 903 P.2d 135, 141 (Ct. App. 1995)). "The inquiry into the protective status of

<sup>1</sup> *Pickering v. Board of Educ.*, 391 U.S. 563 (1968); *Connick v. Myers*, 461 U.S. 138 (1983).

the speech is one of law, not fact.” Lubcke v. Boise City/Ada County Hous. Auth., 124 Idaho 450, 466, 860 P.2d 653, 668 (1993) (quoting Connick v. Myers, 461 U.S. 138, 148 n.7, 75 L. Ed. 2d 708, 103 S. Ct. 1684 (1983)); see also Farnsworth v. Femling, 125 Idaho 283, 286, 869 P.2d 1378, 1382 (1994). The Court makes an independent judgment of whether the statement is of public concern taking into consideration the manner, time and place in which it was made. Lockhart, 127 Idaho at 552, 903 P.2d at 141 (citing Connick, 461 U.S. at 152).

“Whether an employee’s speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record.” Connick, 461 U.S. at 147-48. This determination turns on the nature of the employee’s speech - whether it concerns matters involving political, social or other concerns to the community. Gardner v. Evans, 110 Idaho 925, 933, 719 P.2d 1185, 1193 (1986) (citing Connick, 461 U.S. at 146). A public employee still enjoys First Amendment protection even if his or her views are expressed privately. Givhan v. W. Line Consol. Sch. Dist., 439 U.S. 410, 415-16, 58 L. Ed. 2d 619, 99 S. Ct. 693 (1979). However, speech focused on internal policy and personnel grievances does not implicate the First Amendment. Hyland v. Wonder, 972 F.2d 1129, 1137 (9<sup>th</sup> Cir. 1992).

When applying the proper test to the speech in question there can be no doubt about its protected status. Professor Sadid was obviously speaking on matters of public concern. The heart of his expressions involved his criticism of the performance of ISU officials. Speech “relevant to the public’s evaluation of the performance of governmental agencies” embraces matters of public concern. Freitag v. Ayers, 468 F.3d 528, 545 (9<sup>th</sup> Cir. 2006). “The guarantees of the First Amendment ‘share a common purpose of assuring freedom of communication on matters relating to the functioning of government.’ McKinley [v. City of Eloy], 705 F.2d [1110] at 1114 [(9<sup>th</sup> Cir. 1983)] (quoting Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 575, 65 L. Ed. 2d 973,



100 S. Ct. 2814 (1980) (plurality opinion). Therefore, we have stated that misuse of public funds, wastefulness, and inefficiency in managing and operating government entities are matters of inherent public concern.” *Johnson v. Multnomah County, Or.*, 48 F.3d 420, 425 (9<sup>th</sup> Cir. 1995). As such, this Court should rule as a matter of law that Professor Sadid spoke on matters of concern to the public.

There likewise can be no doubt that the Defendants motivation to take disciplinary action against Professor Sadid was borne from his exercise of the right to protected speech. Professor Sadid is a highly decorated and extremely accomplished member of the faculty at ISU who received stellar performance evaluations for years 2006 and 2007. (*See Exhibit “E” appended to the Affidavit of Plaintiff in Opposition to Defendants’ Motion for Summary Judgment*). It is more than reasonable to infer retaliatory animus on the part of Defendants. Defendant Kunze alluded to it in his deposition:

Dr. Sadid had taken some very active political positions against the president and the vice president. As you will note in this evaluation I have indicated some areas where Dr. Sadid should take note of and aim for improvement in the future. I did not want to exacerbate the issues with him while he was going through these political issues with the president and vice president. I felt it would be best to just not stir the pot.

(*See Kunze’s Deposition Transcript attached as Exhibit “A”, to the Affidavit of Counsel, p. 51, Ll. 6-13*). Summary dismissal of the First Amendment claim based upon protected speech is simply not proper here.

00007011

**B. Professor Sadid's Claim for Breach of Contract and the Covenant of Good Faith and Fair Dealing.**

This Court summarily dismissed the contract claim finding no breach as a matter of law. Professor Sadid seeks reconsideration of this aspect of the Court's grant of summary judgment. He maintains the Court clearly misapplied the standard for reviewing motions for summary judgment when concluding ISU did not breach the employment contract as a matter of law. *See Decision on Motion for Summary Judgment, p. 17 of 25.* On the point of breach, the Court concluded, "However, Sadid received his tenure in 1993, and according to the ISU Faculty Handbook, annual evaluations of a tenured professor are not required." *See Decision on Motion for Summary Judgment, p. 16 of 25.* In reaching this conclusion, the Court has committed clear error.

First, the Court rejected a section of the Handbook favorable to Plaintiff which on its face compels the annual evaluation of "each faculty member in that department . . . ." This section of the Handbook unequivocally applies to each member of the faculty, not just "non-tenured members" of the faculty. Secondly, the Court acknowledges but then ignores the testimony of Defendant Kunze. As the Court noted, the very person responsible for conducting the annual evaluation admitted he did not do it in accordance with policy. Furthermore, Defendant Kunze also admitted he did not conduct the five (5) year periodic, performance evaluation of Plaintiff. (*See Kunze's Deposition Transcript attached as Exhibit "A", to the Affidavit of Counsel, on record herein, pp. 57-58*). This is in line with the testimony of Professor Sadid where he states he has not received the five (5) year, periodic review since 1999, even though it was last due in 2004. *See*

*Affidavit of Plaintiff In Support of Motion for Reconsideration.* No matter how you slice it, Defendant ISU breached the employment contract as a matter of law.

The Court's alternative rational for dismissing the contract claim for want of showing "any injury from the alleged breach of contract" is likewise unsustainable. *See Decision on Motion for Summary Judgment, p. 17 of 25.* The purpose behind conducting performance evaluations is clearly set forth in the record by Defendant Kunze:

Q. In the paragraph just above that one on Exhibit No. 4 Dr. Sadid mentions that, "The ISU rules and policies as reflected in the faculty/staff handbook require that each administrator conduct annual evaluation of his/her faculty's activities and performance." You remember with Dr. Sadid's statements along those lines, don't you, sir?

A. Yes.

Q. And then Dr. Sadid goes on to say, "One purpose of these evaluations is to provide the administration and the faculty member with a long-term record of the faculty's job performance for purposes of promotions and merit raise decisions." Do you see that?

A. Yes.

Q. Do you agree with that statement?

A. Yes.

Q. And then finally Dr. Sadid notes that another purpose is to inform the faculty of his or her performance and areas for possible improvement; do you see that?

A. Yes.

Q. And you agree with that statement?

A. Yes.

(*See Kunze's Deposition Transcript attached as Exhibit "A", to the Affidavit of Counsel, on record herein, pp. 61-62*). Defendant Kunze's admissions coupled with the testimony in paragraph five (5) of Professor Sadid's affidavit, along with Exhibit A-1 appended

thereto, demonstrates sufficient injury to withstand summary judgment. In any event, in Idaho, a claim for breach of contract can be maintained even if the breach caused only nominal damages. *Ransom v. Topaz Mktg., L.P.*, 143 Idaho 641, 645 (2006) (“Nominal damages generally refers to a ‘trifling sum’ awarded to ‘demonstrate, symbolically, that the plaintiff’s person or property has been violated’”). *See also O.A. Olin Co. v. Lambach*, 35 Idaho 767 (1922). It is judicial error to summarily dismiss the claim for breach of contract.

**C. Professor Sadid’s 42 U.S.C. § 1983 Claim For Violation of His Right to Petition the Courts for Redress of Grievances.**

The Defendants failed to ask this Court to analyze whether the Defendants retaliated against Plaintiff for petitioning the Courts for redress of his grievances as expressly alleged in paragraphs 21 and 22 of the *First Amended Complaint* and incorporated into *Count One* by operation of paragraph 34 of the *First Amended Complaint*. In other words, the Defendants have not yet sought summary judgment of this claim.


As the Court may well recall, the Defendants filed their motion for summary judgment of those claims contained in the *original* complaint in spite of the fact that Professor Sadid had earlier filed a motion to amend his pleadings. As a consequence, Defendants failed to seek relief from this claim. As this Court noted, the “burden of establishing the absence of a genuine issue of material fact rests at all times with the party moving for summary judgment.” *See Decision on Motion for Summary Judgment*, p. 4 of 25, citing *Finholt v. Cresto*, 143 Idaho 894, 896-97, 155 P.3d 695, 697-98 (2007). Accordingly, the apparent grant of summary dismissal of this claim must be reversed.

**CONCLUSION**

Based upon the foregoing, Sadid respectfully asks this Court to reconsider its grant of summary judgment in this matter.

DATED: This 5 day of January, 2010.

JOHNSON & MONTELEONE, L.L.P.

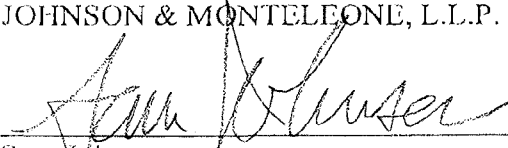
  
\_\_\_\_\_  
Sam Johnson  
Attorneys for Plaintiff

**CERTIFICATE OF MAILING, DELIVERY, OR FACSIMILE TRANSMISSION**

I CERTIFY that on January 5, 2010, I caused a true and correct copy of the foregoing document to be:

<input type="checkbox"/> mailed <input type="checkbox"/> hand delivered <input type="checkbox"/> CM/ECF Electronic Filing <input checked="" type="checkbox"/> transmitted fax machine to: (208) 232-6109	John A. Bailey, Jr. Racine Olson Nye Budge & Bailey, Chtd. 201 E. Center P. O. Box 1391 Pocatello, ID 83204-1391
--	--

JOHNSON & MONTELEONE, L.L.P.

  
\_\_\_\_\_  
Sam Johnson  
Attorney for Plaintiff

ORIGINAL

John A. Bailey, Jr. (ISB No. 2619)  
RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED  
P.O. Box 1391  
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Fax: (208) 232-6109

*Attorney for Defendants*

FILED  
BANNOCK COUNTY  
CLERK OF THE COURT

2010 JAN 12 PM 1:47

BY CW  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF BANNOCK

HABIB SADID, an individual, )  
)  
Plaintiff, )  
)  
vs. )  
)  
IDAHO STATE UNIVERSITY, )  
ROBERT WHARTON, JAY KUNZE, )  
MICHAEL JAY LINEBERRY, )  
MANOOCHEHR ZOGHI, RICHARD )  
JACOBSEN, GARY OLSON, )  
ARTHUR VAILAS and JOHN/JANE )  
DOES I THROUGH X, whose true )  
identities are presently unknown, )  
)  
Defendants. )  
\_\_\_\_\_)

Case No. CV 2008-3942-OC

**DEFENDANTS' MEMORANDUM  
IN OPPOSITION TO PLAINTIFF'S  
MOTION FOR RECONSIDERATION  
RE: DECISION ON MOTION FOR  
SUMMARY JUDGMENT**

COME NOW, Defendants Idaho State University, Robert Wharton, Jay Kunze, Michael Jay Lineberry, Manoochehr Zoghi, Richard Jacobsen, Gary Olson, and Arthur Vailas, by and through counsel of record John A. Bailey, Jr. Of the Firm Racine, Olson, Nye, Budge & Bailey, Chartered, and submit this Memorandum in Opposition to Plaintiff's Motion for Reconsideration as follows:

**DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR  
RECONSIDERATION RE: DECISION ON MOTION FOR SUMMARY JUDGMENT - 1**

## I.

### INTRODUCTION

The Plaintiff's request for reconsideration of the Court's grant of summary judgment to Defendants on all counts alleged in the Amended Complaint is futile as the Plaintiff has not provided adequate or substantial evidence, authority or argument for the relief requested. The exclusive points raised on the Plaintiff's Motion for Reconsideration are that: (1) the Court erred in dismissing his 42 U.S.C. §1983 for violation of his First Amendment rights because it applied the wrong legal standard and because it failed to consider all of the Plaintiff's speech; (2) the Court erred in dismissing the Plaintiff's contract claim because the Court failed to conclude that the less specific section of the ISU Faculty/Staff Handbook applied to his claim and because the Court failed to find that a breach occurred or that the Plaintiff sustained damages alleged; and, (3) the Court erred in dismissing the Plaintiff's 42 U.S.C. §1983 claim under the Fifth and Fourteenth Amendments because Defendants failed to move for summary judgment on this claim. As will be set forth in more detail below, the Plaintiff's Motion for Reconsideration should be summarily denied as the Court properly dismissed all claims alleged by the Plaintiff in his First Amended Complaint after full consideration of the facts and the applicable legal standards.

## II.

### ARGUMENT

#### **A. The Court Appropriately Found That The Plaintiff's Speech Was Not "Protected Speech".**

The Plaintiff's contention that the Court was misguided in applying the *Garcetti v. Cebellos*<sup>1</sup> decision to this case is specious. The Plaintiff is simply asking the Court to ignore the

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<sup>1</sup>547 U.S. 410, 126 S.Ct. 1951, 164 L.Ed.2d 689 (2006).

holding in that case in favor of his interpretation of dicta from that case. In fact, the Plaintiff's argument misinterprets the dicta of *Garcetti*. The statement in *Garcetti* is expressly limited to speech involving academic scholarship or classroom instruction, yet none of Plaintiff's speech related to these very limited areas. Therefore, even if this dicta were to be considered by this Court, the Plaintiff has failed to present evidence admissible at trial to support his claim.

Further, the Plaintiff is asking the Court to ignore more recent persuasive authority from the Ninth Circuit in the case of *Eng v. Cooley*, 552 F.3d 1062 (9<sup>th</sup> Cir. 2009), arguing that the Court simply applied these cases "wholesale" rather than evaluating his claims based upon all applicable authority.

In its Decision on Motion for Summary Judgment, the Court accurately applied the balancing test required on a 42 U.S.C. §1983 claim for unconstitutional retaliation based upon alleged "protected speech" by considering relevant persuasive and binding authority from the United States Supreme Court, the Ninth Circuit, and Idaho.<sup>2</sup>

After so doing, the Court aptly noted that this case is most similar to the Ninth Circuit case of *Hong v. Grant*<sup>3</sup> by focusing on the key inquiry necessitated by *Connick*<sup>4</sup>; namely, the

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<sup>2</sup>Contrary to the Plaintiff's assertion, in addition to the precedent challenged by the Plaintiff, the Court based its decision on several other pertinent cases, including but not limited to *Brewster v. Bd. of Educ.*, 149 F.3d 971 (9<sup>th</sup> Cir. 1991), *Engquist v. Oregon Dept. Of Agr.*, — U.S. —, 128 S. Ct. 2146, 170 L.Ed.2d 975(2008); *Connick v. Myers*, 461 U.S. 138, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983), *Pickering v. Bd. of Educ.*, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968), *Berry v. Dept. of Soc. Servs.*, 447 F.3d 642 (9<sup>th</sup> Cir. 2006), *McKinley v. City of Eloy*, 705 F.2d 1110 (9<sup>th</sup> Cir. 1983), *Colburn v. Trustees of Indiana University*, 973 F.2d 581 (7<sup>th</sup> Cir. 1992), *Waters v. Churchill*, 511 U.S. 661, 114 S.Ct. 1878 (1994), *Arnett v. Kennedy*, 416 U.S. 134, 94 S.Ct. 1633 (1974), and *Hong v. Grant*, 516 F.Supp.2d 1158 (C.D. Cal. 2007).

<sup>3</sup> 516 F.Supp.2d 1158 (C.D. Cal. 2007).

<sup>4</sup>461 U.S. 138, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983).



content of the speech. The Court properly found that just as Hong's statements allegedly exposing government waste and mismanagement were internal administrative disputes having no relevance to the community as a whole, the Plaintiff's statements relating to ISU's plans to merge the College of Technology with the College of Engineering were nothing more than personal grievances against ISU relating to the Plaintiff's interest in his employment and were not a matter of public concern. (See Decision on Motion for Summary Judgment at Pgs. 9-11). While, the Plaintiff now emphasizes other articles not initially emphasized to oppose summary judgment to show that his speech was protected, the statements made in all of these articles show that the Plaintiff's speech was not of public concern as it surrounded personal grievances and internal administrative disputes at the university<sup>5</sup>, which content is not constitutionally protected. See *Karr v. Bermeosolo*, 142 Idaho 444, 129 P.3d 88 (2005); citing *Hyland v. Wonder*, 972 F.2d 1129 (9<sup>th</sup> Cir. 1992).

Similarly, the new cases relied upon by the Plaintiff in efforts to avoid the Court's ruling that his speech was not of public concern are readily distinguishable. See *Freitag v. Ayers*, 468 F.3d 528 (9<sup>th</sup> Cir. 2006)(wherein the speech was made by a former correctional officer as a private citizen when she was writing about sexual harassment not corrected by the California Department of Corrections and Rehabilitation); see also *Johnson v. Multnomah County, Or.*, 48 F.3d 420 (9<sup>th</sup> Cir. 1995)(wherein public employee with Department of Environmental Services made speech ranging from alleged mismanagement, misuse of public funds, to potentially criminal behavior). These cases demonstrate that speech about potentially illegal or criminal

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<sup>5</sup> All of the speech that the Plaintiff engaged-in was to voice his personal grievances on internal administrative disputes such as the lack of faculty involvement in decision-making, the "secret" merger issue, and research emphasis.

conduct by government may be of public concern. However, none of the Plaintiff's cited speech in this case addresses proof of potentially criminal or illegal conduct by Defendants. Rather, his speech went to criticisms of particular administrators' character and the propriety or their administrative decisions. Again, these are clearly internal administrative disputes and/or personal grievances having no relevance to the community as a whole.

Further, as the Court properly found, the Plaintiff was speaking as a public employee for ISU rather than a private citizen when he made his so-called "protected speech". Every article attached to the Plaintiff's Affidavit in Opposition to Plaintiff's Motion for Summary Judgment was in his capacity as "Habib Sadid, Ph.D., P.E., professor of engineering at Idaho State University".<sup>6</sup> The Plaintiff made no effort in the articles to avoid his affiliation with ISU by holding himself out simply as Habib Sadid. Further, none of the speech was made anonymously as a private citizen. Rather, the Plaintiff proudly and repeatedly held himself out as a public employee for ISU.<sup>7</sup> The Plaintiff does not challenge this finding in the Motion to Reconsider, and this fact alone supports dismissal of Plaintiff's claim.

Furthermore, a public employee's official duties are not narrowly defined, but instead encompass the full range of the employee's professional responsibilities. *Hong v. Grant*, 516 F.Supp. 2d 1158 (C.D. Cal. 2007).<sup>8</sup> The record reflects that the Plaintiff, as an ISU faculty member, had an affirmative duty to speak out on matters involving university policy and, therefore, his speech in all referenced articles was undoubtedly made pursuant to his official

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<sup>6</sup>See all articles attached as Exhibit A thereto.

<sup>7</sup>*Id.*

<sup>8</sup>See also *Eng v. Cooley*, 552 F.3d 1062 (9<sup>th</sup> Cir. Cal. 2009).

duties. (See excerpts from ISU Faculty/Staff Handbook attached as Exhibit "2" to the Reply Affidavit of Counsel Re: Defendants' Motion for Summary Judgment). All of the speech that the Plaintiff engaged-in was to voice concern over internal university policy such as the lack of faculty involvement in decision-making, the "secret" merger issue, and research emphasis.

The following quote from one of the Plaintiff's cited articles in 2005 criticizing ISU's administration and its salary decisions is a prime example that he was speaking pursuant to his official duties: "I am ashamed as a distinguished teacher at this school of the administration."

Finally, the Court properly decided that, even if the Plaintiff's speech were protected, nothing in evidence provided by the Plaintiff proves that his speech was a substantial motivating factor in Defendants' action as the Plaintiff did not even apply for the Chair position.<sup>9</sup> The Plaintiff has offered no new evidence that his speech was a substantial motivating factor for any of the Defendants' actions. For these reasons, and the reasons relied upon by the Court in its Decision on Motion for Summary Judgment, the Court properly entered judgment as a matter of law in favor of Defendants on the Plaintiff's 42 U.S.C. §1983 claim for unconstitutional retaliation for violation of his First Amendment rights.

**B. The Court Properly Dismissed Plaintiff's Breach Of Contract Claim.**

**1. The Court Correctly Considered The More Specific And Applicable Section From ISU's Faculty/Staff Handbook When Analyzing The Plaintiff's Contract Claim.**

In his motion to reconsider, the Plaintiff maintains the argument that he has always made in this case; namely, that Defendants breached his employment contract by failing to perform

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<sup>9</sup>Although not emphasized in the Court's Decision on Motion for Summary Judgment, the evidence in the record also shows that the Plaintiff did not receive the lowest salary increases due to his speech as alleged. Rather, Exhibit 4 to the Affidavit of Counsel in Support of Motion for Summary Judgment at Bates page 237 shows that **from 2001 to 2004 none of the faculty received raises due to financial constraints, except one year, and in that year, the Plaintiff received the second highest raise in the entire college.** (Emphasis added).

annual performance evaluations relating to his efforts as a tenured faculty member. By his Affidavit in Support of Motion for Reconsideration, the Plaintiff now alleges that no periodic performance evaluations were ever done. As set forth below, the evidence shows that this is misleading as the plaintiff never went five (5) years without being evaluated on his performance as a tenured professor. The Plaintiff, while providing no authority for the proposition, contends that the Court committed “clear error”, “unprecedented to Plaintiff’s counsel”, when it rejected the less specific section of the ISU Faculty/Staff Handbook; namely, Part 4, Section IV, (B)(1) to determine his contract claim. In addition to lacking any authority, this argument misses the mark. The undisputed evidence demonstrates two separate reasons for rejecting Plaintiff’s claims on this point.

The Court correctly concluded that Defendants had no obligation to perform annual performance evaluations due to the Plaintiff’s tenured professor status by relying upon the more specific and unambiguous section of the ISU Faculty/Staff Handbook related to evaluation of “Faculty/Tenure”. (See Page 16 of the Decision on Motion for Summary Judgment). This is clear contractual interpretation applicable to this authority.<sup>10</sup>

Under the ISU Faculty/Staff Handbook Part 4, Section IV (B)(1), it is clear that annual performance evaluations are used for evaluation of non-tenured faculty only and for the stated

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<sup>10</sup>See *Kessler v. Tortoise Development, Inc.*, 130 Idaho 105, 937 P.2d 417 (1997)(stating that the determination of a contract’s meaning and legal effect are questions of law to be decided by the court where the contract is clear and unambiguous. Similarly, the determination of whether a contract is ambiguous or not is a question of law over which the court exercises free review, and in determining whether a contract is ambiguous, the task is to ascertain whether the contract is **reasonably** subject to conflicting interpretation)(Emphasis added). The evaluation of “Tenure/Faculty” set forth in the cited sections of the ISU Faculty/Staff Handbook are not subject to reasonably conflicting interpretation as the section relied upon by the Plaintiff is clearly for non-tenured faculty and the section relied upon by Defendants is clearly for tenured faculty.

purpose of deciding final recommendation relative to reappointment, non-reappointment, acquisition of tenure, or other personnel action. Whereas, under Part 4, Section IV (B)(7) of the ISU Faculty/Staff Handbook, a full-blown periodic performance evaluations, such as are used when that faculty member was initially evaluated for tenure or for promotion to the rank of professor, are only done when that tenured faculty member's performance is questioned on any of the relevant criteria considered in these evaluations. See ISU Faculty/Staff Handbook Part 4, Section IV (B)(7)(b) and (c) attached to the Affidavit of Counsel in Support of Motion for Summary Judgment as Exhibit 5. The Plaintiff's reliance upon the cited deposition testimony of Dr. Kunze and/or his own Affidavit in Support of Motion to Reconsider, to show that his contract was breached because no periodic performance evaluation was done in 2004 is simply done to provide a red herring argument to avoid the plain language and meaning of ISU's policies on the timing, need, and/or purpose of full-blown periodic performance evaluations of tenured professors. The evidence in the record shows that Dr. Kunze had no need to conduct one as there is no evidence that the Plaintiff's performance had been called into question by administration. This is obviously the case because a tenured professor has reached the highest possible level of promotion or rank at ISU<sup>11</sup> and, therefore, five (5) year periodic performance evaluations are needed only in those instances where that tenured professor's performance is questioned in writing, on the three specific areas of evaluation, and where corrective action may be warranted.

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<sup>11</sup>See ISU Faculty/Staff Handbook Part 4, Section III (A)(1) attached to the Affidavit of Counsel in Opposition to Plaintiff's Motion for Reconsideration as Exhibit 1.

The Plaintiff provided no admissible summary judgment evidence originally, or upon his motion for reconsideration, that his performance was ever questioned in writing by ISU's administration on any of the relevant criteria used for evaluation during any of the years after he became a tenured professor in 2000 through the time that he filed his complaint in 2008. (Emphasis added).<sup>12</sup> As such, Defendants were under no obligation to perform a full-blown periodic performance evaluation in the same manner as the evaluation that was performed in 1999 when the Plaintiff was reviewed for the potential promotion to tenured professor status.

Furthermore, it is clear that even if an obligation to evaluate existed, the Defendants fulfilled any and all of their contractual obligation to evaluate the Plaintiff's performance because he never went five (5) years without receiving a performance evaluation. The Plaintiff admitted, and it is shown by Exhibit 3 to the Affidavit of Counsel in Opposition to Plaintiff's Motion for Reconsideration, that the Plaintiff timely received his performance evaluations in 2001 and 2006, which were for the 2000 and 2005 academic school years.<sup>13</sup> For these reasons, and the reasons relied upon by the Court in its Decision on Motion for Summary Judgment, the Plaintiff's contract claim fails as a matter of law.

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<sup>12</sup>To clarify and correct the record, the Plaintiff did not achieve the status of tenured professor in 1999, but rather, he achieved that status in 2000. See the January 17, 2000 letter attached as Exhibit 2 to the Affidavit of Counsel in Opposition to Plaintiff's Motion for Reconsideration showing that the recommendation for the Plaintiff's promotion was not made according to ISU policy until 2000.

<sup>13</sup>In addition to Exhibit 3, see also depo excerpts of the Plaintiff attached to the Affidavit of Counsel in Opposition to Plaintiff's Motion for Reconsideration as Exhibit 4 at Vol. 1, pg. 137, ln. 17-25; pg. 138, ln. 1-12. It is clear that the Plaintiff received his performance evaluation for his first year as a tenured professor and he received his performance evaluation for his fifth academic year as a tenured professor. His reviews were in conformance with the spirit, purpose, and substance of ISU's policy on performance evaluations of tenured faculty members.

**2. Even If The Court Is Inclined To Reconsider Whether Defendants Had An Obligation To Perform Annual Evaluations Of The Plaintiff's Performance, The Evidence Shows That The Plaintiff Was Evaluated Each And Every Year After He Became A Tenured Professor Except For 2001.**

While the Plaintiff claims that he did not timely have annual evaluations for academic school years 2001-2004, the evidence shows that he was evaluated during each of these years and every other year following his attainment of tenured professor status in 2000 except for 2001. (See Confidential Performance Evaluations for academic years 2000 and 2002-2008 attached to the Affidavit of Counsel in Opposition to Motion to Reconsider as Exhibit 3; *see also* depo excerpts of Plaintiff at Vol. 1, pg. 91, ln. 18-25; pg. 92, ln. 1-25, pg. 93, ln. 1-5 attached as Exhibit 4 to the Affidavit of Counsel in Support of Motion for Summary Judgment).<sup>14</sup>

It is significant to note that the indices considered in annual evaluations of non-tenured faculty members do not differ from the indices considered in periodic evaluations of tenured faculty members. Under either form of evaluation, the essential criteria typically considered are the individual's teaching effectiveness, research and creative activities, professional related services, other assigned responsibilities, overall contributions to the department, and areas of excellence and/or areas needing further development. All of the Plaintiff's performance evaluations, which were done every year after he became a tenured professor at ISU except for 2001, referenced and considered these criteria. It is clear from the undisputed record that the Plaintiff's claim that he was not evaluated in accord with ISU's policies is baseless and the Court properly granted Defendants' Motion for Summary Judgment on Plaintiff's contract claim.

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<sup>14</sup>As the Court correctly found, any alleged breach by Defendants before 2003, including Defendants' alleged failure to properly perform an annual performance evaluation in 2001, is time-barred.

**3. The Court Properly Found That, Even If It Were To Assume A Breach Occurred, The Plaintiff Provided No Admissible Summary Judgment Evidence That The Alleged Breach Caused His Claimed Damages.**

The Plaintiff's reliance upon the case of *Ransom v. Topaz Mktg., L.P.*, 143 Idaho 641, 645 (2006) for the argument that a breach of contract claim can be maintained even if the breach caused only nominal damages is clearly inaccurate. Further, this case is of no precedential value as it was a timber trespass action, not a contract action. Its holding is of no application here.

Under Idaho law, the Plaintiff carries the burden of proof on each element of his contract claim, which elements are: (1) a contract existed between the Plaintiff and Defendant(s); (2) the Defendant(s) breached the contract; (3) the Plaintiff has been damaged on account of the breach; and, (4) the amount of the damages. (*See* IDJI 6.10.1). After resolving all inferences in the record in the Plaintiff's favor, the Court correctly found that there was no genuine issue of material fact as to whether the Plaintiff was damaged by the Defendants' alleged breach of his employment contract by allegedly not complying with the performance evaluation requirements of its Faculty/Staff Handbook and by not awarding him the Chair position. Additionally, the Plaintiff has offered no admissible evidence of the "amount of damage" allegedly sustained.

The Plaintiff has provided no evidence that he had a contractual right to receive a salary increase based upon the results of the performance reviews conducted under ISU's policies (or upon any other basis) or that he was guaranteed a specific salary increase. While the Plaintiff has pointed to the deposition testimony of Dr. Kunze to show that performance evaluations were considered for merit pay increases, ISU's policies also state that a merit pay increase is dependent upon the size of the state appropriation and/or salary pool designated to the institution and each



unit. (See the ISU Faculty/Staff Handbook Part 4, Section VI(A)(5)(d) attached to the Affidavit of Counsel in Opposition to the Motion for Reconsideration as Exhibit 1). Merit pay increases are simply not a guaranteed expectation under the Plaintiff's contract.

But more, the evidence in the record shows that the Plaintiff actually received salary increases in all academic years in which the state appropriation and/or salary pool designated to his department was sufficient and in which other faculty members received salary increases.<sup>15</sup> In short, the Plaintiff has presented no evidence of any damage at all. He received merit pay every time other engineering faculty received merit pay.

Additionally, the Court's determination that the Plaintiff failed to show that he was damaged by not receiving the Chair was proper as the Plaintiff had no contractual right to that position and he never even applied for the position.<sup>16</sup> As the Plaintiff failed to show at summary judgment, or upon reconsideration, that ISU breached the employment contract or that he was damaged, the Court properly granted Defendants judgment as a matter of law on the Plaintiff's contract claim.<sup>17</sup>

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<sup>15</sup>See Exhibit 4 to the Affidavit of Counsel in Support of Motion for Summary Judgment at Bates page 237.

<sup>16</sup>This point is also important to the Plaintiff's unconstitutional retaliation claim because he alleges that he did not receive the Chair position due to his speech, yet again, he did not even apply for the position, so Plaintiff has failed to demonstrate evidence of damage on this claim as well.

<sup>17</sup>Although not part of the Court's Decision on Motion for Summary Judgment, the argument advanced by Defendants in the summary judgment briefing that the Plaintiff's contract claim is barred by the equitable doctrines of laches, waiver and estoppel also supports summary dismissal of the Plaintiff's contract claim. The record shows that the Plaintiff knew that he had not "received" his performance evaluation for the 2001 academic year, yet he failed to file a grievance in accord with ISU's policy and waited to file suit over the issue until seven years later. His untimely contract claim, which should have gone through ISU's grievance procedure before suit, should not survive summary judgment on these additional grounds.

**C. Defendants' Summary Judgment Motion Was Decided As Against All Claims Made In The Plaintiff's Amended Complaint, Including Those Related To This Suit.**

The Plaintiff's contention that Defendants failed to seek summary judgment dismissal of his newly added 42 U.S.C. §1983 claim for violation of his Fifth, Seventh, and Fourteenth Amendment rights is highly disingenuous. Although there was a procedural irregularity occasioned by the confusion over whether Defendants filed their summary judgment motion first or whether the Plaintiff filed his motion to amend first, at all times Defendants strenuously opposed the Plaintiff's attempt to add this new claim to his complaint in its briefing and oral argument on Plaintiff's Motion to Amend and his Motion for Additional Time under I.R.C.P. 56(f) on the basis that it was a baseless claim and should be dismissed summarily. While the Court allowed the Plaintiff the additional time that he requested and permitted the amendment to his complaint, the Court also made clear on the record that Defendants' opposition materials submitted on the Plaintiff's Motion to Amend would be considered and treated as part of Defendants' Motion for Summary Judgment. This is reflected on Page 4 of the Decision on Motion for Summary Judgment wherein the Court stated:

After allowing Sadid additional time he requested pursuant to Rule 56 (f), oral argument on Defendants' motion for summary judgment occurred on November 2, 2009. The Court deems the summary judgment motion to be against the Amended Complaint against all Defendants.

Moreover, Defendants' Brief Opposing Plaintiff's Motion to Amend specifically refuted the Plaintiff's new unconstitutional retaliation claim under 42 U.S.C. §1983 for violation of his Fifth, Seventh and Fourteenth Amendment rights based upon the following alleged acts of retaliation: (1) Dr. Zoghi's "falsely accusatory" letter in April of 2009; (2) Dr. Jacobsen's

**DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION RE: DECISION ON MOTION FOR SUMMARY JUDGMENT - 13**

“outlandish” notice of intent to have the Plaintiff dismissed from ISU in May of 2009<sup>18</sup>; (3) Provost Olson’s letter of reprimand in July of 2009; and, (4) President Vailas’ notification that Plaintiff was being placed on administrative leave in August of 2009<sup>19</sup>.

Defendants briefed this precise issue fully and highlighted that the Plaintiff had failed to articulate any conspiracy or policy of Defendants aimed at depriving him of his Fifth, Seventh, and Fourteenth Amendment rights. Defendants argued that there was no evidence, admissible at trial, or otherwise, that the above-referenced actions were undertaken because the Plaintiff filed suit as the Plaintiff alleged no specific facts showing that Dr. Zoghi, Dr. Jacobsen, Provost Olson, or President Vailas even had personal knowledge of the fact that he had filed suit or requested a jury trial. Additionally, the Plaintiff has offered no evidence, admissible at trial, to prove that the required university policy or conspiracy, by these actors, to deprive Plaintiff of his constitutional rights at any time.

Finally, Defendants emphasized that the Plaintiff’s new unconstitutional retaliation claim under 42 U.S.C. §1983 for his suspension, with pay, was not even a cognizable claim as such action does not raise due process concerns. *See Stearns-Groseclose v. Chelan County Sheriff’s Dep’t.*, 2006 U.S.Dist.LEXIS 4496 (E.D.Wash. 2006);citing *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 544-545, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985)(stating that a due process violation arising from an employer’s inability to keep an employee at work to afford him an opportunity to respond prior to termination due to “significant hazards” could be avoided by

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<sup>18</sup>*Id.*

<sup>19</sup>*Id.*

“suspending with pay”); *see also Hicks v. City of Watonga, Okla.*, 942 F.2d 737, 746 n. 4 (10<sup>th</sup> Cir. 1991)(“suspension with pay does not raise due process concerns”); *Pitts v. Board of Education*, 869 F.2d 555, 556 (10<sup>th</sup> Cir. 1989)(suspension of public employee with pay does not infringe any measurable property interest).

Based upon the foregoing, the Plaintiff’s statement that Defendants’ summary judgment was not made against his 42 U.S.C. §1983 claim for violation of his Fifth, Seventh, and Fourteenth Amendment rights is untenable. The Court should deny the Plaintiff’s Motion for Reconsideration on these grounds, and it should clarify its reasoning for dismissal of this retaliation claim made by the Plaintiff only to the extent it deems it necessary or appropriate under the circumstances.

### III.

### CONCLUSION

Based upon the foregoing points and authorities, the Affidavit of Counsel in Opposition to Plaintiff’s Motion for Reconsideration, and the Decision on Motion for Summary Judgment, Defendants respectfully ask the Court to deny the Plaintiff’s request for relief as he has demonstrated no justifying basis for the Court to reconsider its complete grant of summary judgment to Defendants.

DATED this 12<sup>th</sup> day of January, 2010.

RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED

By: Carol Lippa Valyn for:  
JOHN A. BAILEY, JR.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 12<sup>th</sup> day of January, 2010, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Sam Johnson  
JOHNSON & MONTELEONE, L.L.P.  
405 South Eighth Street, Suite 250  
Boise, Idaho 83702

☒ U. S. Mail  
Postage Prepaid  
☐ Hand Delivery  
☐ Overnight Mail  
☒ Facsimile (208) 947-2424

Carol Lipp: Valya for:  
JOHN A. BAILEY, JR.

John A. Bailey, Jr. (ISB No. 2619)  
RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED  
P.O. Box 1391  
Pocatello, Idaho 83204-1391  
Telephone: (208) 232-6101  
Fax: (208) 232-6109

*Attorney for Defendants*

FILED  
BANNOCK COUNTY  
CLERK OF THE COURT

2010 JAN 12 PM 1:47

BY *[Signature]*  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF BANNOCK

HABIB SADID, an individual, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
IDAHO STATE UNIVERSITY, )  
MICHAEL JAY LINEBERRY, and )  
JOHN/JANE DOES I THROUGH X, )  
whose true identifies are presently )  
unknown, )  
 )  
Defendants. )

Case No. CV 2008-3942-OC

**AFFIDAVIT OF JOHN A. BAILEY, JR.  
IN OPPOSITION TO PLAINTIFF'S  
MOTION FOR RECONSIDERATION**

STATE OF IDAHO )  
 : ss  
County of Bannock )

JOHN A. BAILEY, JR., having been duly sworn, deposes and states as follows:

1. That I am an attorney for the Defendants and I have personal knowledge of the facts stated herein.
2. Attached hereto as Exhibit "1" are true and correct copies of sections of the ISU Faculty/Staff Handbook.

**AFFIDAVIT OF JOHN A. BAILEY, JR. IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR RECONSIDERATION**

**Page 1**

3. Attached hereto as Exhibit "2" is a true and correct copy of the January 17, 2000 letter regarding the Plaintiff's promotion to tenured professor status.

4. Attached hereto as Exhibit "3" are true and correct copies of the Plaintiff's Confidential Performance Evaluations for academic years 2000 and 2002-2008.

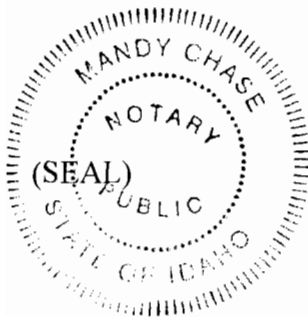
5. Attached hereto as Exhibit "4" are true and correct copies of excerpts from the Plaintiff's deposition at Vol. 1, pg. 91, ln. 18-25; pg. 92, ln. 1-25; pg. 93, ln. 1-5; pg. 137, ln. 17-25; pg. 138, ln. 1-12 .

DATED this 12 day of January, 2010

RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED

By: John A. Bailey  
JOHN A. BAILEY, JR.

SUBSCRIBED AND SWORN TO before me this 12 day of January, 2010.



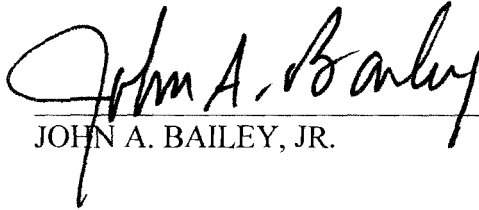
Mandy Chase  
NOTARY PUBLIC FOR IDAHO  
Residing at: Pocatello  
My Commission Expires: 5.2.2012

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 12 day of January, 2010, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Sam Johnson  
JOHNSON & MONTELEONE, L.L.P.  
405 South Eighth Street, Suite 250  
Boise, Idaho 83702

☐ U. S. Mail  
Postage Prepaid  
☐ Hand Delivery  
☐ Overnight Mail  
☒ Facsimile (208) 947-2424

  
\_\_\_\_\_  
JOHN A. BAILEY, JR.



# EXHIBIT

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## **Part 4. Personnel Policies**

### **Section III. Academic Rank and Other Appointments**

#### **A. Academic Rank (Updated 5/02)**

##### **1. Primary Faculty Ranks and Location**

There are four (4) primary faculty ranks at Idaho State University:

- a. Professor
- b. Associate Professor
- c. Assistant Professor
- d. Instructor

Faculty rank, including initial appointment to faculty rank and any promotion to a higher rank, is located in a department or equivalent unit.

##### **2. Criteria for Faculty Rank and Promotion**

###### **a. Qualifications**

Each college has personnel policies with respect to appointment, promotion, tenure and nonreappointment which may be more specific than those included herein. The qualifications which follow are minimum criteria.

###### **(1) Instructor**

- (a) The degree of Master of Arts or Master of Science.
- (b) Good scholarship as reflected in academic record.
- (c) Demonstrated competence in the field plus interest in and capacity for teaching.

###### **(2) Assistant Professor**

- (a) The degree of Master of Arts or Master of Science plus graduate work beyond the minimum required for a master's degree.
- (b) Good scholarship as reflected in academic record.

- (c) Demonstrated competence in the field plus interest in and capacity for teaching.
- (d) Evidence of creative scholarly activities.
- (e) Demonstrated interest in the welfare of institutions of higher learning.
- (f) Three years of teaching experience at the college level.

(3) Associate Professor

- (a) The degree of Doctor of philosophy or the terminal degree in the field.
- (b) Good scholarship as reflected in academic record.
- (c) Demonstrated competence in the field plus interest in and capacity for teaching.
- (d) Evidence of creative scholarly activities and of continuing productive scholarship.
- (e) Demonstrated interest in the welfare of institutions of higher learning.
- (f) Five years of teaching experience at the college level or other appropriate experience in the field.

(4) Professor

- (a) The degree of Doctor of Philosophy or the terminal degree in the field.
- (b) Good scholarship as reflected in academic record.
- (c) Demonstrated competence in the field plus interest in and capacity for teaching.
- (d) Evidence of creative scholarly activities and of continuing productive scholarship.
- (e) Demonstrated interest in the welfare of institutions of higher learning.
- (f) Seven years of teaching experience at the college level or other appropriate experience in the field.
- (g) Evidence of intellectual and academic leadership.

b. College of Technology Faculty

College of Technology faculty must be qualified according to the Idaho State Plan for Professional-Technical Education and certified as outlined in the Idaho Certification Standards for Professional-Technical Personnel.

c. Special Instructional Faculty

Each college has personnel policies with respect to appointment, promotion, and nonreappointment which may be more specific than those included herein. The

qualifications which follow are minimum criteria.

(1) Assistant Lecturer

- (a) A Master's degree
- (b) Demonstrated competence in the field plus interest in and capacity for teaching.

(2) Associate Lecturer

- (a) A Master's degree
- (b) Five years at the Assistant Lecturer rank or equivalent teaching experience.
- (c) Demonstrated competence in the field plus interest in and capacity for teaching.
- (d) Demonstrated interest in the welfare of institutions of higher learning.

(3) Senior Lecturer

- (a) A Master's degree
- (b) Five years at the Associate Lecturer rank or equivalent teaching experience.
- (c) Demonstrated competence in the field plus interest in and capacity for teaching.
- (d) Demonstrated interest in the welfare of institutions of higher learning.
- (e) Evidence of pedagogical and academic leadership.

d. Exceptions

Persons who have made substantial contributions to their fields of specialization or who have demonstrated exceptional scholarship and competence or appropriate creative accomplishment of recognized outstanding quality may be appointed to faculty rank without satisfying established University criteria for initial appointment or promotion, provided that the qualifications of such individuals have been reviewed in accordance with University procedures and the appointment is recommended by the President.

e. Rank for Administrative Nonclassified Employees

An administrative nonclassified employee may hold faculty rank in a department or equivalent unit in which rank has previously been established. An administrative nonclassified employee may be granted rank at the time of appointment or subsequent thereto, or may be promoted in rank, if recommended by the President.

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## **Part 4. Personnel Policies**

### **Section VI. Benefits/Compensation/Personnel Files**

#### **A. Compensation**

1. Salaries and Hourly Wages
2. Overtime Compensation
3. Shift Differential
4. Classified Employees Salary Administration
5. Salary Administration Guidelines

#### **B. Time Records**

#### **C. Personnel Files**

1. Employee Files
2. Personnel Records Exempt from Disclosure
3. File Maintenance and Retention

#### **D. General Leaves**

1. Leaves With Compensation
2. Leaves Without Compensation
3. Faculty Leaves of Absence Without Pay

#### **E. Sabbatical/Special Leaves**

1. Faculty Sabbatical Leave
2. Staff Professional Leave

#### **F. Retirement**

#### **G. Resignations**

1. General
2. Classified
3. Nonclassified
4. Faculty

#### **H. Fringe Benefits**

1. Insurance
2. Disability Benefits
3. Retirement

## 5. Salary Administration Guidelines

### a. General

It is the policy of Idaho State University to attract the most qualified people available and to encourage them to build careers with ISU. In keeping with this policy, it is our intent to approve salaries that are internally consistent and externally competitive within the higher education system and our geographical region. Each employee will be compensated on the basis of performance and contribution to the accomplishment of the goals of Idaho State University.

### b. Authority to Set Salaries

The President, or his/her designee, has the responsibility for the administration of this policy. Each Dean, Director, or unit head will recommend to the President, or his/her designee, salaries of faculty and staff within their unit. The State Board of Education has final authority to approve salary recommendations for each institution under its jurisdiction. At their discretion, either the State Board of Education or the Idaho Legislature may stipulate procedures or guidelines regarding salaries which can impact the administration of salaries.

### c. Factors Affecting Salary Decisions

Factors affecting individual salary decisions include:

- (1) Individual qualifications appropriate to the specific areas of responsibility;
- (2) Individual professional record (includes teaching, research and service for faculty);
- (3) Relative equity in position (rank and discipline for faculty) to other salaries within the institution; and
- (4) Relative equity in position (rank and discipline for faculty) to comparable salaries in the region.

### d. Annual Merit Increases

Annual merit increases are to be determined by the President, or his/her designee, on recommendation and in consultation with other administrators and based on:

- (1) Size of the state appropriation and/or salary pool designated to the institution and each unit; and
- (2) Individual professional (teaching, research and service for faculty) performance.

### e. Bonuses

In addition to merit increases described in this policy, the President may grant a lump sum bonus not to exceed \$2,000.00 per fiscal year upon certification of exceptional meritorious service. Bonus requests must be submitted in writing to Human Resources for

# EXHIBIT

## 2

5





Office of the Dean  
College of  
Engineering  
Campus Box 8060  
Pocatello, Idaho  
83209-8060

January 17, 2000

TO: Dr. Jonathan Lawson, VP Academic Affairs

FROM: Jay F. Kunze, Dean of Engineering

SUBJECT: Promotion Recommendation for Assoc. Prof. Habib Sadid, PhD, PE

The College of Engineering Promotion and Tenure Review Committee has completed its deliberations and rendered a decision on the promotion request of Dr. Habib Sadid, who is midway through his 11th year of service at ISU. He received tenure and was promoted to Associate Professor in June 1994.

Based on my review of all of the relevant materials and information, I have given careful consideration to this matter in consultation with the two associate deans of engineering, Drs. Stuffle and Naidu, (the three of us comprise the College Promotion and Tenure Committee). I concur with the unanimous recommendation of the PTRC, and am recommending to you and the President that Associate Professor Habib Sadid be promoted to the rank of Professor in the College of Engineering.

c: President Richard Bowen  
Dr. Habib Sadid  
PTRC Members

Phone:  
(208) 236-2902  
FAX:  
(208) 236-4538



ISU Is An Equal Opportunity Employer

# EXHIBIT

## 3

CONFIDENTIAL

EVALUATION OF Habib Sadid DATE May 2001

BY Dr. Jay F. Kunze, Dean of the COLLEGE OF ENGINEERING

Period of Evaluation January 2000 to December 2000

TEACHING

1. List the regular teaching assignment of the above faculty member:

Semesters Spring 2000, Fall 2000

<u>Course No.</u>	<u>Title</u>	<u>Credits</u>	<u>Approx. # Students</u>
-------------------	--------------	----------------	---------------------------

Spring 2000

CE 599	Finite Element Methods	3	3
CE 462	Design of Steel Structures	3	15
CE 467	Structural Engineering Lab	1	10

Fall 2000

CE 461	Adv Structured Analysis	3	12
CE 499/599	PPE Civil (Idaho Falls)	3	4
ENGR 321	Mechanics of Materials	3	19
ME 599-03	Advanced Mechanics of Solids	3	3

2. Provide a short narrative evaluation of the teaching effectiveness of the above faculty member. If more space is required, attach another sheet.

*Dr. Sadid has long been recognized by the students as a most outstanding teacher. He not only has excellent teaching abilities as a lecturer and facilitator for learning, but also has a great deal of care and appreciation for all of the students. He devotes a great deal of time to prepare for every class session.*

3. Check those factors (besides student evaluations) which influence this evaluation.

<input checked="" type="checkbox"/>	Informal student feedback
<input checked="" type="checkbox"/>	Class visitation
<input checked="" type="checkbox"/>	Faculty member's self-evaluation
<input checked="" type="checkbox"/>	Discussion with colleagues
<input type="checkbox"/>	Other (Explain) _____

4. List below any fairly consistent patterns of colleague feedback.

*Colleagues (those who spend time talking with students) recognize Dr. Sadid's teaching skills. He is also recognized for his selfless service to student organizations and to the university.*

5. A. Give the results of analysis of formal student evaluations (overall summary of all questions on class evaluation forms).

**Spring 2000**

CE 462: 85 % of students felt the class was excellent  
13%. Above Average; 2%. Average;

CE 467: 68 % of students felt the class was excellent  
24%. Above Average; 8%. Average; <1%, Needs Improvement;

CE 599: 49 % of students felt the class was excellent  
21%. Above Average; 31%. Average;

**Fall 2001**

CE/ME 499/599 58% of students felt the class was excellent  
31% Above Average, 9% Average, 2% Needs Improvement

ENGR 321 71% of students felt the class was excellent  
26% Above Average, 2% Average,

CE 461 57% of students felt the class was excellent  
28% Above Average, 13% Average, 2% Needs Improvement

5. B. Give any fairly consistent patterns of informal student feedback.

Handouts provided in class were very helpful.

Excellent teacher. Enjoyed the enthusiasm of the subject.

Instructor is always well prepared with the highest level of knowledge.

6. If the evaluation differs significantly from your previous evaluation(s) of this faculty member, please summarize the differences.

*No significant difference.*

7. How has this faculty member responded to previous evaluations (if any?)

*Appropriately.*

**RESEARCH-CREATIVE WORK**

8. Provide a bibliography of research and creative work published subsequent to the person's employment by Idaho State University. If a previous evaluation has been made, include here only those subsequent to the last evaluation.

ABET 2000, ISU experience. Paper presented in 62<sup>nd</sup> ASSE, PNW Section Conference, Bozeman, MT. April 27-29, 2000.

9. Present evidence of continuing reflective inquiry or other creative contributions.

Presently working on paper on the "Effect of Axial Force on Shear Strength of Concrete Bridge Columns".

10. In regard to research and creative work, how to you rank him in relation to the other members of your department?

*Dr. Sadid has had little opportunity to get involved in conventional funded research. His teaching efforts and professional service efforts (including time advising students) keep him heavily involved, and he is among the most valuable of the faculty in these two areas. Once he is involved in a graduate program with students to assist in research, he will have a better opportunity to engage himself in funded research efforts.*

11. How has he responded to previous evaluations of his research and/or other creative contributions?

*Appropriately*

#### PROFESSIONALLY RELATED PUBLIC SERVICE

12. Provide specific indication of professionally-related public service that the faculty member has rendered subsequent to his employment at Idaho State University. If a previous evaluation has been made, include only those items subsequent to that evaluation.

Board member of Portneuf Green Way (PGW)

1. Meditation Garden (building) for Bannock Youth Foundation.
2. Cutoff Trail for PGW. Land Easement for PGW.
3. Plan review for Skate Park.

American Society of Engineering Education (ASEE):

1. President of Northwest Section, June 2000 to May 2001
2. Campus representative for ISU in the ASEE

American Society of Civil Engineers - Faculty Advisor for ISU Student Chapter  
Chair of the Snake River Branch

National Society of Professional Engineers/Idaho Society of Professional Engineers  
- Faculty advisor for ISU student chapter

Habib Sadid

Faculty Activity and Evaluation, Calendar Year 2000

13. In this regard, how do you rank him with the other members of your faculty?  
*Among the more active, and definitely involved to the extent one would expect of competent and professionally active faculty.*

AWARDS, HONORS, AND SPECIAL RECOGNITIONS

14. Specify and comment on any awards, honors, or special recognitions earned since the last evaluation.

Nominated for ASEE, PNW Section Dean's Teaching Award.  
Selected as Portneuf Greenway Board Member of the Year

15. If this faculty member has a specific, significant administrative assignment within the department, describe it and evaluate his performance.  
*He functions as the principal faculty directing the MS program in Engineering Structures and Mechanics.*

16. List any committee assignments.

Promotion and Tenure Committee for Dr. Sato and Dr. Wabrek.  
Coordinator for ES&M Master Program  
Co-coordinator, Geology Symposium  
Faculty Selection Committee for CE position.  
College Curriculum Committee  
Graduate Program Committee.  
Scholarship Committee  
Scholastic Appeal's Committee  
ASEE Campus Rep and PNW Section Chair.  
ASCE Student Advisor  
ISPE Student Advisor  
Curriculum Council  
Liaison to International Recruiting

17. Does this person have the generally recognized terminal degree for your field? YES (If the answer is no, please explain.)
18. Do you foresee any personal or professional factors which might limit this person's long term performance as a faculty member at Idaho State University? NO (If yes, please explain.)

Habib Sadid

Faculty Activity and Evaluation, Calendar Year 2000

TENURED FACULTY

19. Performance and recommendation:

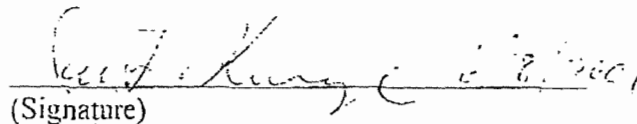
X Satisfactory

           Unsatisfactory, initiate a full formal review

*Dr. Sadid is among the most appreciated and valuable members of the College of Engineering faculty. He is highly regarded throughout the university. No only is he competent as a teacher, but has special rapport with the students, showing understanding and appreciation of their efforts to learn engineering principles and enter the engineering profession. Dr. Sadid is very active in university politics and service. He is astute, and introspective. He is also decisive in his actions, but is cautioned to be a bit more circumspect on issues involving campus politics.*

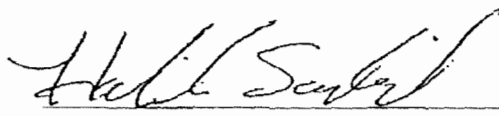
20. How was the essence of this evaluation communicated to the faculty member?

*By review of the written document, followed by discussion of its contents and a listing and discussion of goals for the current calendar year.*

  
(Signature)

Dr. Jay F. Kunze, Dean  
College of Engineering

21. Recommendation of the Dean and Associate Dean (if applicable) to be attached in letter form.

 7/9/01  
(Faculty signature) Date

CONFIDENTIAL

FACULTY ACTIVITY and EVALUATION OF Dr. Habib Sadid DATE April 2003

BY Dr. Jay F. Kunze, Dean of the COLLEGE OF ENGINEERING

Period of Evaluation January 2002 to December 2002

TEACHING

1. List the regular teaching assignment of the above faculty member:

Semesters Spring 2002, Fall 2002

<u>Course No.</u>	<u>Title</u>	<u>Credits</u>	<u>Approx. # Students</u>
Spring 2002			
CE 464-01	Design Concrete Structures	3	12
ENGR 350-01	Mechanics of Material	2	19
ENGR 481-04	Finite Element Methods	3	1
ENGR 650-06	Thesis	V	5
ESM 665-01,02	Finite Element Methods	3	8
ESM 667-01	Structures and Mechanics	3	8

Fall 2002

Sabbatical

2. Provide a short narrative evaluation of the teaching effectiveness of the above faculty member. If more space is required, attach another sheet.

3. Check those factors (besides student evaluations) which influence this evaluation.

☒ Informal student feedback  
☐ Class visitation  
☐ Faculty member's self-evaluation  
☐ Discussion with colleagues  
☐ Other (Explain) \_\_\_\_\_

4. List below any fairly consistent patterns of colleague feedback.

*Dr. Sadid is recognized by other faculty as having received awards at ISU for his teaching.*



CONFIDENTIAL

FACULTY ACTIVITY and EVALUATION OF Dr. Habib Sadid DATE April 2003

5. A. Give the results of analysis of formal student evaluations.

Spring 2002

ENGR 350 75% of students felt the class was excellent  
20% Above Average, 4% Average, 1% Needs Improvement

ESM 665 79% of students felt the class was excellent  
15% Above Average, 5% Average

CE 464 55% of students felt the class was excellent  
38% Above Average, 7% Average

Fall 2002

Sabbatical Leave

5. B. Give any fairly consistent patterns of informal student feedback.

Dr Sadid goes out of his way to help students learn.  
Excellent instructor.  
More design type examples and homework.

6. If the evaluation differs significantly from your previous evaluation(s) of this faculty member, please summarize the differences.

7. How has this faculty member responded to previous evaluations (if any?)

*He recognizes that he is considered to be an excellent teacher.*

RESEARCH-CREATIVE WORK

8. Provide a bibliography of research and creative work published subsequent to the person's employment by Idaho State University. If a previous evaluation has been made, include here only those subsequent to the last evaluation.

Two papers to be submitted for publication this summer

- 1) Design of Particulate Composite Material using Crumb Rubber

CONFIDENTIAL

FACULTY ACTIVITY and EVALUATION OF Dr. Habib Sadid DATE April 2003

- 2) Design and Evaluation of Base Isolation Devices for Residential Buildings using Crumb Rubber

(Co-PI) Passive Control of Floor Vibrations Using Advanced Materials, A proposal submitted to NSF in the fall of 2002 with Dr. Ebrahimpour  
(Not funded)

(Co-PI) Acquisition of a Broad0-based Structural Dynamics Laboratory, A poposal submitted to NSF with Dr. Ebrahimpour and Dr. Blotter, \$210,000, (Funded)

(PI) Lowcost Earthquake Devices for Residential Buildings, A proposal submitted to NSF, \$265,000, (Not Funded)

(Co-PI) Retrofitting Floor Systems fro Residential Buildings, A proposal submitted to NSF, \$590,000, (Not Funded)

Currently, I am working on another proposal, which was started last fall and it is about to be done. It will be submitted to NSF.

9. Present evidence of continuing reflective inquiry or other creative contributions.

Last year, I graduated 4 MS students.

10. In regard to research and creative work, how to you consider his research activity?  
*This last year Dr. Sadid has been very active in research efforts. In the above listing, he did not include the construction of the Shipping Cask Drop Pad, in Research Park. That was a learning experience for Dr. Sadid, on a contract that had been procured from the INEEL, and then turned over to Dr. Sadid to carry out. His original estimate was increased by 40% to allow for a contingency.*

11. How has he responded to previous evaluations of his research and/or other creative contributions?

PROFESSIONALLY RELATED PUBLIC SERVICE

12. Provide specific indication of public service that the faculty member has rendered subsequent to his employment at Idaho State University. If a previous evaluation has been made, include only those items subsequent to that evaluation.

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FACULTY ACTIVITY and EVALUATION OF Dr. Habib Sadid DATE April 2003

Meditation Garden for the Bannock Youth Foundation. Dedicated last summer.  
Cut-off trail for the Portneuf Greenway. It is finished last fall and it will be dedicated early this summer.

Overlook in the Pre-history Park: Under development  
Preparation for the Pocatello River Fest (June 26)  
Many other small projects for the Greenway.

13. In this regard, how do you consider his service activity? *Significant, especially in university and college committee work. He has also been active in the regional section of ASEE.*

AWARDS, HONORS, AND SPECIAL RECOGNITIONS

14. Specify and comment on any awards, honors, or special recognitions earned since the last evaluation.

Distinguished Teacher of the Year 2001-2002  
Master Public Servant year 2001-2002  
Bannock Youth Foundation Community Award (2003)  
Master Public Servant, year 2002-2003  
Nominee for the ASEE Zone IV chair. (not elected)  
Out Standing Campus Representative, PNW Section of ASEE

15. If this faculty member has a specific, significant administrative assignment within the department, describe it and evaluate his performance.

16. List any committee assignments.  
University Curriculum Council  
College of Engineering Curriculum Committee  
Graduate Program Committee  
College Scholarship Committee  
College Scholastic Committee  
International Student Liaison  
ASEE Campus Representative  
College Strategic planning committee  
ISPE Student Chapter Advisor  
M.S. Program in ESM Coordinator

1

FACULTY ACTIVITY and EVALUATION OF Dr. Habib Sadid DATE April 2003


17. Does this person have the generally recognized terminal degree for your field? YES (If the answer is no, please explain.)
18. Do you foresee any personal or professional factors which might limit this person's long term performance as a faculty member at Idaho State University?  
NO (If yes, please explain.)

## TENURED FACULTY

19. Performance and recommendation:

\_\_\_\_\_x\_\_\_\_\_ Satisfactory  
 \_\_\_\_\_ Unsatisfactory

20. Note, this evaluation was not communicated to Dr. Sadid in April 2003 because of political issues involving him on campus.

  
(Signature)  
Dr. Jay F. Kunze, Dean  
College of Engineering

(Faculty signature)

Date \_\_\_\_\_

**CONFIDENTIAL FACULTY ACTIVITY REPORT and EVALUATION**  
**OF Dr. Habib Sadid**

**PERIOD OF EVALUATION: JANUARY 2003 THROUGH DECEMBER 2003**

EVALUATION DATE April 2004

BY Dr. Jay F. Kunze, Dean of the COLLEGE OF ENGINEERING

**TEACHING**

1. List the regular teaching assignment of the above faculty member:

Semesters Spring 2003, Fall 2003

<u>Course No.</u>	<u>Title</u>	<u>Credits</u>	<u>Approx. # Students</u>
Spring 2003			
CE 464-01	Design of Concrete Structures	3	9
CE 499-01	Prestressed Concrete	3	1
CE 599-01	Prestressed Concrete	3	2
ENGR 652-04	Design of Concrete Structures	3	1
ENGR 481-06	Finite Element Methods	3	7
ENGR 650-06	Thesis	V	2
ESM 665-01	Finite Element Methods	3	4
Fall 2003			
ENGR 210-01	Engineering Statics	3	28
ENGR 210-02	Engineering Statics	3	2
ENGR 650-03	Thesis	V	2
ESM 431-01	Mechanics of Sol	3	16
ESM 531-01	Advanced Mechanics of Sol	3	4

2. Provide a short narrative evaluation of the teaching effectiveness of the above faculty member. If more space is required, attach another sheet.

*Dr. Sadid is considered to be an effective and conscientious teacher.*

3. Check those factors (besides student evaluations) which influence this evaluation.

☒ Informal student feedback  
☒ Class visitation  
☐ Faculty member's self-evaluation  
☐ Discussion with colleagues

**CONFIDENTIAL FACULTY ACTIVITY REPORT and EVALUATION**  
**OF Dr. Habib Sadid**

\_\_\_\_\_ Other (Explain) \_\_\_\_\_

4. List below any fairly consistent patterns of colleague feedback.  
*He is respected by colleagues.*

5. A. Give the results of analysis of formal student evaluations.

Spring 2003

CE 464      42% of students felt the class was excellent  
                 42% Above Average, 15% Average, 1% Needs Improvement

Fall 2003

ESM 431      41% of students felt the class was excellent  
                 40% Above Average, 17% Average, 1% Needs Improvement, 1% Poor  
ENGR 210      55% of students felt the class was excellent  
                 27% Above Average, 15% Average, 3% Needs Improvement

5. B. Give any fairly consistent patterns of informal student feedback.

Spring 2003      Dr Sadid is a great teacher.

Fall 2003      One of the best instructors at ISU.  
                 Sadid is a great asset to the Engineering College.

6. If the evaluation differs significantly from your previous evaluation(s) of this faculty member, please summarize the differences.

7. How has this faculty member responded to previous evaluations (if any ?)  
*Dr. Sadid knows that he is well liked by the students, and he is an effective teacher as is indicated by the FE exam results in the subject areas in which he teaches.*

**RESEARCH-CREATIVE WORK**

8. Provide a bibliography of research and creative work published subsequent to the person's employment by Idaho State University. If a previous evaluation has been made, include here only those subsequent to the last evaluation.

**CONFIDENTIAL FACULTY ACTIVITY REPORT and EVALUATION**  
**OF Dr. Habib Sadid**

"Low-cost Base Isolation Devices for Residential Buildings" with Bridger Morrison, to be presented at the SEM X International Congress & Exposition on Experimental and Applied Mechanics, June 7-10, Costa Mesa, California.

"Math Usage in Engineering", with Mike Ellis and others, to be presented at the ASEE National conference, Salt Lake City, UT.

9. Present evidence of continuing reflective inquiry or other creative contributions.

A proposal was submitted to NSF for the Engineering, Math, and Computer Science Scholarship Program, It is asking for \$100K per year for four years to support 30 students. It is forwarded for further consideration.

Two proposals in progress.

1. Alkali-Aggregate Reaction (AAR), to be submitted to ITD by May 31.
  2. Geotechnical problems for Gas-Cooled Nuclear Reactors, to be submitted to INEEL.
10. In regard to research and creative work, how do you consider his effort ?  
*He has a desire to do research. Teaching is his primary interest.*
11. How has he responded to previous evaluations of his research and/or other creative contributions? *Somewhat defensively*

**PROFESSIONALLY RELATED PUBLIC SERVICE**

12. Provide specific indication of public service that the faculty member has rendered subsequent to his employment at Idaho State University. If a previous evaluation has been made, include only those items subsequent to that evaluation.

Campus Representative for ISU, representing ISU in PNW Section of ASEE  
Will serve as a Section Chair for the PNW Section of ASEE,

Board Member: Portneuf Greenway Foundation

13. In this regard, what do you consider his professional service activities?  
*Dr. Sadid is especially active in campus and college politics, and serves on a number of*

CONFIDENTIAL FACULTY ACTIVITY REPORT and EVALUATION  
OF Dr. Habib Sadid

*committees.*

AWARDS, HONORS, AND SPECIAL RECOGNITIONS

14. Specify and comment on any awards, honors, or special recognitions earned since the last evaluation.

Master Public Servant: 2002-2003

15. If this faculty member has a specific, significant administrative assignment within the department, describe it and evaluate his performance.

16. List any committee assignments.

College Curriculum Committee, Chair  
ISU Campus Rep. for PNW-ASEE and PNW Section Chair.  
CE Faculty Position Search Committee, Chair  
ISPE Student Advisor  
Sigma Xi, the Scientific Research Society, Chair

17. Does this person have the generally recognized terminal degree for your field? YES  
(If the answer is no, please explain.)

18. Do you foresee any personal or professional factors which might limit this person's long term performance as a faculty member at Idaho State University? YES (If yes, please explain.)

*It is the desire of this administrator to be able to assign some types of administrative responsibilities to Dr. Sadid. It is hoped that he will demonstrate to the university and college administration his ability to work in a cooperative administrative manner in various initial assignments being planned.*

TENURED FACULTY

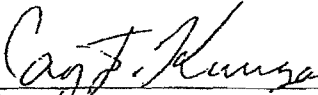
19. Performance and recommendation:

  x   Satisfactory  
       Unsatisfactory



**CONFIDENTIAL FACULTY ACTIVITY REPORT and EVALUATION**  
**OF Dr. Habib Sadid**

20. *This document was not delivered to Dr. Sadid in May 2004 because of a contentious situation that developed in mid-May.*

  
\_\_\_\_\_  
(Signature)  
Dr. Jay F. Kunze, Dean  
College of Engineering

\_\_\_\_\_  
(Faculty signature)

\_\_\_\_\_  
Date

**CONFIDENTIAL**

**FACULTY ACTIVITY REPORT & EVALUATION OF Habib Sadid**

**DATE** May 2005

**PERIOD OF EVALUATION: JANUARY 2004 THROUGH December 2004**

**BY Dr. Jay F. Kunze, Dean of the COLLEGE OF ENGINEERING**

**TEACHING**

1. List the regular teaching assignment of the above faculty member:

Semesters Spring 2004 , Fall 2004

<u>Course No.</u>	<u>Title</u>	<u>Credits</u>	<u>Approx. # Students</u>
Spring 2004			
CE 436-01	Roadway Design	3	8
CE 464-01	Design Concrete Structures	3	7
ENGR 481-06	Intro to Finite Element Metods	3	8
ENGR 481-08	Structures and Mech Lab	3	2
ENGR 650-06	Thesis	V	1
ESM 665-01	Finite Element Methods	3	7
ESM 667-01	Structures and Mech Lab	3	2
Summer 2004			
ENGR 210-01	Engineering Statics	3	6
Fall 2004			
CE 599-02	Des Prestressed Conc Stru	3	3
ENGR 210-01	Engineering Statics	3	27
ENGR 350-01	Mechanics of Material	3	25
ENGR 650-03	Thesis	V	1
ESM 652-01	Advanced Topics in ESM	3	5

2. Provide a short narrative evaluation of the teaching effectiveness of the above faculty member. If more space is required, attach another sheet.

*Dr. Sadid is consistently recognized as an effective and conscientious teacher*

**CONFIDENTIAL**

**FACULTY ACTIVITY REPORT & EVALUATION OF Habib Sadid**

3. Check those factors (besides student evaluations) which influence this evaluation.

  x   Informal student feedback  
       Class visitation  
       Faculty member's self-evaluation  
       Discussion with colleagues  
       Other (Explain) \_\_\_\_\_

4. List below any fairly consistent patterns of colleague feedback.

*Some concern about recent developments within the college.*

5. A. Give the results of analysis of formal student evaluations.

Spring 2004

ESM 665	56% of students felt the class was excellent 31% Above Average, 11% Average, 2% Needs Improvement
CE 464	23% of students felt the class was excellent 36% Above Average, 38% Average, 3% Needs Improvement
CE 436	26% of students felt the class was excellent 57% Above Average, 13% Average, 4% Needs Improvement
CE 481	77% of students felt the class was excellent 21% Above Average, 1% Average

Fall 2004

ENGR 250-01	50% of students felt the class was excellent 40% Above Average, 9% Average, 1% Needs Improvement
ESM 652-01	67% of students felt the class was excellent 25% Above Average, 8% Average
ENGR 210-01	53% of students felt the class was excellent 29% Above Average, 16% Average, 3% Needs Improvement, 1% Poor

5. B. Give any fairly consistent patterns of informal student feedback.

**CONFIDENTIAL**

**FACULTY ACTIVITY REPORT & EVALUATION OF Habib Sadid**

Spring 2004

Always willing to help outside of class.  
Great teacher, but try's to squeeze to much in one semester

Fall 2004

Good handouts helped understand better  
Good instructor, way above average. Really cares about our education  
Need to find a better book.

6. If the evaluation differs significantly from your previous evaluation(s) of this faculty member, please summarize the differences.
7. How has this faculty member responded to previous evaluations (if any?)  
*Dr. Sadid is well aware of his reputation as a teacher, for he is well liked by the students.*

**RESEARCH-CREATIVE WORK**

8. Provide a bibliography of research and creative work published subsequent to the person's employment by Idaho State University. If a previous evaluation has been made, include here only those subsequent to the last evaluation.

"Low-cost Base Isolation Devices for Residential Buildings" with Bridger Morrison, presented at the SEM X International Congress & Exposition on Experimental and Applied Mechanics, June 7-10, Costa Mesa, California.

"Math Usage in Engineering", with Mike Ellis and others, presented at the ASEE National conference, Salt Lake City, UT.

"Hollow-Core Seismic Base Isolation Bearings Using Crum- Rubber Composite For Residential Construction", with Kasey Ketterling and Justin Coleman, to presented at the SEM X International Congress & Exposition on Experimental and Applied Mechanics, June 8-11, Portland, Oregon.

9. Present evidence of continuing reflective inquiry or other creative contributions.

## CONFIDENTIAL

### FACULTY ACTIVITY REPORT & EVALUATION OF Habib Sadid

NSF: Engineering, Math, and Computer Science Scholarship Programs, \$100K per year for four years to support 30 students. Funded.

Proposal to NSF: NEESR-SG Seismic Performance of Single Family Masonry Buildings – Modeling and Base Isolation Systems.

Proposal to ITD: Alkali-Aggregate Reaction (AAR), to be submitted by May 31, 2005

10. In regard to research and creative work, how do you consider his work.  
*Dr. Sadid has submitted proposals, and does want to participate in research. However, his main passion is teaching. For a number of years he has served as the principal ISU representative to the regional section of ASEE.*
11. How has he responded to previous evaluations of his research and/or other creative contributions? *With mixed feelings.*

### PROFESSIONALLY RELATED PUBLIC SERVICE

12. Provide specific indication of public service that the faculty member has rendered subsequent to his employment at Idaho State University. If a previous evaluation has been made, include only those items subsequent to that evaluation.

Campus Representative for ISU, representing ISU in PNW Section of ASEE  
ASEE-PNW Section chair  
Program Chair, PNW Section Annual meeting

Board Member: Portneuf Greenway Foundation

13. In this regard, how do you consider his service activity efforts?  
*He is active in both campus and college committees and politics.*

CONFIDENTIAL

FACULTY ACTIVITY REPORT & EVALUATION OF Habib Sadid

AWARDS, HONORS, AND SPECIAL RECOGNITIONS

14. Specify and comment on any awards, honors, or special recognitions earned since the last evaluation.

Nominated for the ISPE Outstanding teaching Award

15. If this faculty member has a specific, significant administrative assignment within the department, describe it and evaluate his performance.

16. List any committee assignments.

ISU Campus Rep. for PNW-ASEE and PNW Section Chair.

CE Faculty Position Search Committee, Chair

ISPE Student Advisor

Advisor for the Steel Bridge Construction, ASCE Students Chapter

Sigma Xi, the Scientific Research Society, Chair

Council for Teaching and Learning

17. Does this person have the generally recognized terminal degree for your field? YES  
(If the answer is no, please explain.)

18. Do you foresee any personal or professional factors which might limit this person's long term performance as a faculty member at Idaho State University? YES (If yes, please explain.)

*Dr. Sadid has shown great indignation over administrative decisions that have been made within the college. This has created a great deal of stress, affected productivity, and created an atmosphere of hostility in the college, at a very critical time for the college.*

TENURED FACULTY

19. Performance and recommendation:

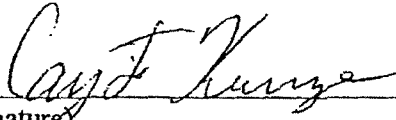
  x   Satisfactory in regular faculty duties

  x   Unsatisfactory in regard to fostering a collegial relationship

**CONFIDENTIAL**

**FACULTY ACTIVITY REPORT & EVALUATION OF Habib Sadid**

20. *This evaluation is not being submitted to the faculty member at this time because of extreme hostility of the faculty member to the evaluator.*

  
(Signature)  
Dr. Jay F. Kunze, Dean  
College of Engineering

\_\_\_\_\_  
(Faculty signature)

\_\_\_\_\_  
Date

**CONFIDENTIAL FACULTY ACTIVITY REPORT and EVALUATION**

**PERIOD OF EVALUATION: JANUARY 2005 THROUGH December 2005**

**EVALUATION OF Dr. Habib Sadid, PE DATE MAY 2006**

**BY Dr. Jay F. Kunze, Dean of the COLLEGE OF ENGINEERING**

**TEACHING**

1. List the regular teaching assignment of the above faculty member:

Semesters Spring 2005 , Fall 2005

<u>Course No.</u>	<u>Title</u>	<u>Credits</u>	<u>Approx. # Students</u>
Spring 2005			
CE 464-01	Design Concrete Structure	3	7
CE 499-01	Finite Element Methods	3	3
CE 564-01	Design Concrete Structure	3	2
CE 665-01	Finite Element Methods	3	5
CE 667-01	Structures & Mechanics Lab	3	4
ENGR 652-06	Advanced Pressure Vessels	V	1
ME 665-01	Finite Element Methods	3	2
Fall 2005			
CE 599-02	Des Prestressed Concrete	3	3
CE 664-01	Dynamics of Structures	3	4
ENGR 350-01	Mechanics of Material	3	16
ENGR 350-02	Mechanics of Material	3	1
ENGR 650-03	Thesis	V	2
ENGR 652-06	Special Topics	V	1
ENGR 210	- finished the last half of the course	3	26

2. Provide a short narrative evaluation of the teaching effectiveness of the above faculty member. If more space is required, attach another sheet.  
*Dr. Sadid has an established reputation as a teacher much appreciated by the students.*
3. Check those factors (besides student evaluations) which influence this evaluation.

☒ Informal student feedback  
☒ Class visitation  
☒ Faculty member's self-evaluation  
☒ Discussion with colleagues  
Other (Explain) \_\_\_\_\_

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Sadid Habib Faculty Activity Report and Evaluation - Calendar Year 2005

4. List below any fairly consistent patterns of colleague feedback.

*Generally recognized as a fair and effective teacher*

5. A. Give the results of analysis of formal student evaluations.

Spring 2005

CE 464 50% of students felt the class was excellent  
38% Above Average, 11% Average, 1% Needs Improvement

CE 665 44% of students felt the class was excellent  
31% Above Average, 16% Average, 9% Needs Improvement

ENGR 350-01 38% of the students felt the class was excellent  
49% Above Average, 20% Average, 3% Needs Improvement

CE 599-02 85% of the students felt the class was excellent  
15% Above Average

ENGR 210-01 26% of the students felt the class was excellent  
32% Above Average, 33% Average, 8% Needs Improvement, 1% Poor

5. B. Give any fairly consistent patterns of informal student feedback.

Spring 2005

Dr. Sadid is an excellent instructor.

Don't present new material during dead week and then have it on the final.

Fall 2005

Difficult to give an accurate analysis of this course because the instructors were switched half-way through the semester.

Habib is an excellent instructor.

6. If the evaluation differs significantly from your previous evaluation(s) of this faculty member, please summarize the differences.

7. How has this faculty member responded to previous evaluations (if any?)

*With pride*

**RESEARCH-CREATIVE WORK**

8. Provide a bibliography of research and creative work published subsequent to the person's employment by Idaho State University. If a previous evaluation has been made, include here only those subsequent to the last evaluation.

H. Sadid, N. South, "Finite Element Modeling of Monolithic Dome Structures", accepted for presentation at the SEM Annual Conference & Exposition on Experimental and Applied Mechanics, St. Louis, Missouri, June 5-7, 2006.

H. Sadid, K.K. Ketterling, J. Coleman, "Hollow-Core Seismic Base Isolation Bearings Using Crum- Rubber Composite For Residential Construction", Proceeding of the 2005 SEM X International Congress & Exposition on Experimental & Applied Mechanics, Portland, Oregon, June 7-9, 2005.

H. Sadid, "Is It Time to Raise the Bar for High School Graduates?" Pacific Northwest Section of ASEE Annual Conference, Butte, Montana April 7-9, 2005.

Co-authors (*Who?*) and H. Sadid, "Simulating Occupant-Induced Vibration of Wood Floors with Rotated Joists", Proceedings of the Tenth International Conference in Civil, Structural, and Environmental Engineering Computing, Rome, Italy, Aug. 30-Sept. 2, 2005.

9 ☐ **Evidence of Continuing reflective inquiry or other creative contributions.**

Experimental and finite element study of Base-Isolation devices using Crum and Natural rubber. Finite Element modeling, Monolithic concrete dome structures, Alkali-Silica Reaction (ACR) in concrete and mitigation techniques.

**Graduate Students:**

South, Nanette, "Finite Element Modeling of Monolithic Dome Structures," 2005. Defended December 2005.

Strong Mark, "Buckling Analysis of Conical Shells subjected to Vacuum," to be defended in the Spring of 2006.

Chag, Niraj, "Analysis and Design of Monolithic Dome Structures," to be defended in Spring or Summer of 2006.

Mendez, Sergio, "Design and Testing of Fiber Reinforced Base Isolation Devices for Residential Buildings," In progress.

Guerra, Edwin, an undergraduate student, "Testing of Base Isolation Devices for their

Sadid Habib Faculty Activity Report and Evaluation - Calendar Year 2005

Mechanical Properties, funded by the Undergraduate Research Committee.

**Research and Educational Proposals**

Principal Investigator, "Computer Science, Mathematics, and Engineering Scholarships (CSEMS) for Southeast Idaho," National Science Foundation, \$400,000, August 2004 (funded). In charge of awarding and mentoring up to 30 scholarships to talented and Needy students who are interested in the CSEMS target majors.

"Elastomeric Base-Isolation Devices for Residential Buildings Using Natural and Crumb Rubber," National Science Foundation, \$365,000, submitted January 25<sup>th</sup> 2006 (pending).

10. In regard to research and creative work, how do you consider his contributions?

*Dr. Sadid continues to show interest in research, and has submitted one major proposal this last year for external funding.*

11. How has he responded to previous evaluations of his research and/or other creative contributions? *Defensively.*

**PROFESSIONALLY RELATED PUBLIC SERVICE**

12. Provide specific indication of public service that the faculty member has rendered subsequent to his employment at Idaho State University. If a previous evaluation has been made, include only those items subsequent to that evaluation.

**Public Service**

**Board Member of Portneuf Greenway Foundation,**

**Annual accomplishments**

- Spalding Overlook project (completed)
- RiverFest, the PGF annual fund raising event
- PGF Winter Dance fund raising event
- Valley-Pride clean up project
- Member of the Project Committee

**The Power House Project**

This is an on going project studying the possibility of preserving the Powerhouse and turning it into a museum. This is an old building on the west side of the town that housed a small hydropower generator. We have discovered that the original hydropower turbine

## Sadid Habib Faculty Activity Report and Evaluation - Calendar Year 2005

is buried in the basement. I am currently trying to raise funds to preserve the turbine and renovate the building. The generator was salvaged during the Second World War for its copper. The turbine was used for three years (1894-1897) generating 100 KW power.

### **Whitman Street Bridge over the Portneuf River**

The Whitman Street bridge is located on the west side of Pocatello and has been closed for many years. Upon the request of the Old Town Community Association, the bridge has been inspected and analyzed. It is intended to rehabilitate the bridge for use by pedestrian and bicycle traffic.

### **MATHCOUNTS Competition**

proctor for the MATHCOUNTS Competition, a national competition for seventh and eighth graders held annually. I have been involved with this competition for over 10 years.

### **Public Speaker**

Zoroastrianism, the First Monotheistic Concept of God, an ancient religion prophesied by Zarathrustra (Zoroaster). Zoroaster's teachings are based on three principals: **Good Reflection, Good Words, and Good Deed**, May 19, 2005.

### **Outreach Activities**

Mentored and supervised a community member to finish his senior design project in civil engineering and receive his bachelor degree from the Autonomous University of Zacatecas, Mexico. Sergio Mendez immigrated to the United States with his parents and sisters with two credits short of receiving his BS degree. Sergio was unable to go back to finish his degree requirements since he had the responsibility of supporting his family. I supervised Sergio on his project for three years and in the spring of 2005, he successfully defended his project and received his B.S. degree. Currently, Sergio is enrolled in our graduate program in civil engineering.

In the spring of 2005, I held a luncheon for 100 high school math and science teachers as well as counselors in Southeast Idaho to promote Computer Science, Engineering and Mathematics. This luncheon was funded from the NSF CSEMS scholarship funds. The turn out was low!

Sent two undergraduate students from the Civil and the Mechanical Engineering programs to Franklin Junior High School to promote Computer Science, Engineering and Mathematics. The students talked about engineering, taught some basic engineering principles and held a student contest. This project was funded from the NSF-CSEMS scholarship funds. It was a successful visit.

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Sadid Habib Faculty Activity Report and Evaluation - Calendar Year 2005

13. In this regard, how do you consider his professional service activities in regard to expectations of faculty? *Appropriate and significant*

**AWARDS, HONORS, AND SPECIAL RECOGNITIONS**

14. Specify and comment on any awards, honors, or special recognitions earned since the last evaluation.

**Awards and Honors**

- 2005 Idaho Excellence in Engineering Educator Award, Presented by Idaho Society of Professional Engineers, April 15, 2005.
- Master Public Servant Award (University-wide), ISU, 2005-2006 (the Distinguished Public Servant is selected from 5 Master Public Servants.)

15. If this faculty member has a specific, significant administrative assignment within the department, describe it and evaluate his performance.

16. List any committee assignments.

Chair, Pacific Northwest (PNW) Section of ASEE, 2004-2005 and Program Chair for Section Annual Conference.

Immediate past chair, PNW Section of ASEE, responsible for heading up the awards committee. This includes choosing the recipient of the teaching award, best paper at the conference, and outstanding campus representative for the section.

Section Campus Representative, PNW Section of ASEE

President, Idaho State Chapter of Sigma Xi, the Scientific Research Society 2004-2005 and 2005-2006.

2004-2005: ASCE Student Advisor for the Steel Bridge design, construction, and contest. ISU Engineering Students took 4<sup>th</sup> place in the Pacific Northwest Section of ASCE.

ISPE Student Chapter Advisor, in charge of organizing the Engineering Week activities including K-12 student visit and contests.

M.S. Degree Program Coordinator for Civil Engineering

Council for Teaching and Learning

Sadid Habib Faculty Activity Report and Evaluation - Calendar Year 2005

The University Distinguished Teacher Award Committee

ABET Working Group, to prepare response to ABET

17. Does this person have the generally recognized terminal degree for your field? YES (If the answer is no, please explain.)
18. Do you foresee any personal or professional factors which might limit this person's long term performance as a faculty member at Idaho State University? YES (If yes, please explain.) *Continued negative attitude and behavior, publically and involving students, and reflecting adversely on the college.*

**TENURED FACULTY**

19. Performance and recommendation:

- x   Satisfactory in standard faculty member duties  
  x   Unsatisfactory in collegial attitude

20. How was the essence of this evaluation communicated to the faculty member?  
*By copy of this form.*

*Jay F. Kunze May 17, 2006*  
(Signature)  
Dr. Jay F. Kunze, Dean  
College of Engineering

\_\_\_\_\_  
(Faculty signature)

\_\_\_\_\_  
Date

CONFIDENTIAL EVALUATION

PERIOD OF EVALUATION: JANUARY 2006 THROUGH December 2006

EVALUATION OF Habib Sadid DATE March 2007

BY Dr. Richard Jacobsen, Dean of the COLLEGE OF ENGINEERING

TEACHING

1. List the regular teaching assignment of the above faculty member:

Semesters Spring 2006 , Fall 2006

<u>Course No.</u>	<u>Title</u>	<u>Credits</u>	<u>Approx. # Students</u>
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Spring 2006

CE 464-01	Design Concrete Structures	3	11
CE 665-01	Finite Element Methods	3	5
ENGR 481-02	Finite Element Methods	3	8
ENGR 650-06	Thesis	V	3
ME 665-01	Element Methods	3	1
ME 665-02	Element Methods	3	1

Summer 2006

ENGR 220-01	Engineering and Dynamics	3	13
ENGR 220-02	Engineering and Dynamics	3	4

Fall 2006

CE 664-01	Dynamics of Structures	3	6
ENGR 350-01	Mechanics of Material	3	17
ENGR 650-03	Thesis	V	2
ENGR 652-02	Special Topics	V	1

2. Provide a short narrative evaluation of the teaching effectiveness of the above faculty member. If more space is required, attach another sheet.

DR SADID IS AN EXCELLENT TEACHER !

3. Check those factors (besides student evaluations) which influence this evaluation.

\_\_\_\_\_ Informal student feedback  
\_\_\_\_\_ Class visitation

X     Faculty member's self-evaluation  
         Discussion with colleagues  
         Other (Explain) \_\_\_\_\_

4. List below any fairly consistent patterns of colleague feedback.

None

5. A. Give the results of analysis of formal student evaluations.

Spring 2006

CE 464-01 57% of the students felt the class was excellent  
35% Above Average, 8% Average

Fall 2006

ENGR 350-01 42% of the students felt the class was excellent  
34% above average, 22% average, 2% needs improvement

CE 644-01 54% of the students felt the class was excellent  
28% above average, 18% average

5. B. Give any fairly consistent patterns of informal student feedback.

Spring 2006

Concern for students, an excellent professor.  
More real world applications.  
Notes in class were helpful.

Summer 2006

Course was very fast paced.

Fall 2006

Good course  
More exams needed  
Would like better textbook

6. If the evaluation differs significantly from your previous evaluation(s) of this faculty member, please summarize the differences.

N/A



7. How has this faculty member responded to previous evaluations (if any?)

N/A

### RESEARCH-CREATIVE WORK

8. Provide a bibliography of research and creative work published subsequent to the person's employment by Idaho State University. If a previous evaluation has been made, include here only those subsequent to the last evaluation.

H. Sadid, N. South, "Finite Element Modeling of Monolithic Dome Structures," Society of Experimental Mechanics, SEM Annual Conference & Exposition on Experimental and Applied Mechanics, St. Louis, Missouri, June 5-7, 2006.

9. Present evidence of continuing reflective inquiry or other creative contributions.

- Research Proposal Submitted:  
Base-Isolation Devices for Residential Buildings Using Natural and Crumb Rubber," National Science Foundation, \$365,000, submitted January 25, 2006.  
Not funded.

- Graduate Students: I have 4 graduate students working on their MS degree:
  1. Maylinn Rosales, graduating Spring 2007
  2. Niraj Ghag, graduating Spring 2007
  3. Sergio Mandez, graduating Spring 2007
  4. Venkateswar Miyyapu, a new graduate student

- Center for Motion Analysis and Biomechanics, CMAB

I am working with several other departments including Biology, Physical Therapy, and ID Virtualization Laboratory to develop a center for motion analysis and biomechanics. (Work in progress)

- Member of the Biomechanics Section of the Society for Experimental Mechanics. Organizing a track in Kinematics for the upcoming conference to be held in Springfield, Massachusetts, chairing two sessions, and will present three papers.
- Base-Isolation Devices for Residential Buildings Using Natural and Crumb Rubber," National Science Foundation, \$365,000, submitted January 25, 2006.  
Not funded.
- Administering 30 students receiving scholarships from NSF funds.

- Attended an ABET workshop on Engineering Program Assessment, January 12, 2007, Phoenix, Arizona.
10. In regard to research and creative work, how do you rank him/her in relation to the other members of your department?
- Dr. Sadid is active with graduate students. He is trying to improve funding for his research, but has not been successful.
11. How has he/she responded to previous evaluations of his/her research and/or other creative contributions?
- N/A

#### PROFESSIONALLY RELATED PUBLIC SERVICE

12. Provide specific indication of public service that the faculty member has rendered subsequent to his employment at Idaho State University. If a previous evaluation has been made, include only those items subsequent to that evaluation.
- ASCE student contests, Steel Bridge advisor, spent tens of hours with students on the drawing board and the shop to design and build the bridge. Prepare students for the contest to be held in Fairbanks, Alaska, April 13-14, 2007.
  - Portneuf Greenway Foundation Board member. In charge of projects, fund raising, and events.
  - Prepared a one hour Power Point presentation on Career and presented in ENGR 120 in Pocatello and Idaho Falls.
  - Prepared two hour Power Point presentation material on Ethics and Professionalism, Fall 2006, two hour lecture for ENGR 496 and 2 hour lecture for ENGR 120.
  - Spent 25 hours on a project for the Basic American Food and the CEE program will receive \$5,500 as donation.
  - Outreach activities: Shoban High School, Marsh Valley High School, Blackfoot High School and Franklin High School.
13. In this regard, how do you rank him/her with the other members of your faculty?
- Dr. Sadid is outstanding in his public service.

### AWARDS, HONORS, AND SPECIAL RECOGNITIONS

14. Specify and comment on any awards, honors, or special recognitions earned since the last evaluation.

- Master Public Servant Award, ISU, Spring 2006
- 2005 Idaho Excellence Educator Award, ISPE

15. If this faculty member has a specific, significant administrative assignment within the department, describe it and evaluate his/her performance.

Interim Department Chair -- Dr. Sadid has done a good job as Chair of CEE during this interim period.

16. List any committee assignments.

- ASCE Advisor for steel bridge contest
- ASEE Campus Representative
- ISPE Student Advisor
- CoE Shop Committee
- Honor's Program Committee
- President, ISU Chapter of Sigma Xi, the Scientific Research Society
- ABET Working Group Committee

17. Does this person have the generally recognized terminal degree for your field? Yes  
(If the answer is no, please explain.)

18. Do you foresee any personal or professional factors which might limit this person's long term performance as a faculty member at Idaho State University? No (If yes, please explain.)

19. How was the summary of this evaluation communicated to the faculty member?

Personal interview

20. Recommendation of the Dean and Associate Dean (if applicable) to be attached in letter form.

Comments: *Holih is a great asset to College.*

Dr. D. Subbaram Naidu 19 April 2007  
Signature Date  
Dr. D. Subbaram Naidu, Associate Dean

Summary for Chair Evaluation:

Only one evaluation was received from the CEE faculty. No summary is included here to protect the anonymity of the reviewer.

Recommendation/comments of the Dean:

Richard T Jacobsen 4/19/07  
Signature Date  
Dr. Richard T Jacobsen: Dean of Engineering

FACULTY STATEMENT

I have read this annual evaluation by the Dean of my department/unit, and I understand I have five (5) working days in which to respond to it in writing.

☒ I will not be responding to this evaluation ☐ I will be responding to this evaluation

Habib Sadid 4/19/07  
Signature of faculty member Date  
Name: Habib Sadid, Chair Dept of Civil Engineering

**COLLEGE OF ENGINEERING  
IDAHO STATE UNIVERSITY**

**CONFIDENTIAL EVALUATION - FACULTY**

**PERIOD OF EVALUATION: JANUARY 2007 THROUGH DECEMBER 2007**

Evaluation of : Habib Sadid

Date: April 21, 2008

Dept of : Civil and Environmental Engineering

**TEACHING**

- List the regular teaching assignment of the above faculty member:

Semesters Spring 2007, Fall 2007

<u>Course No.</u>	<u>Title</u>	<u>Credits</u>	<u>Approx. # Students</u>
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Spring 2007

CE 464-01	Design Concrete Structures	3	11
CE 665-01	Finite Element Methods	3	1
ENGR 223-01	Materials and Measurements (8 weeks)	3	22
	<i>*Please see the attached letter for this course</i>		
ME 665-01	Finite Element Methods	3	2

Fall 2007

ENGR 350-01	Mechanics of Material	3	22
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- Provide a short narrative evaluation of the teaching effectiveness of the above faculty member. If more space is required, attach another sheet.

*Dr. Sadid is an excellent teacher and mentor. His accomplishments has been recognized by being selected as " The Most Influential Professor of Engineering, ISU, 2006-2007."*

- Check those factors (besides student evaluations) which influence this evaluation.

\_\_\_\_\_ Informal student feedback  
\_\_\_\_\_ Class visitation

\_\_\_\_ Faculty member's self-evaluation  
\_\_\_\_ Discussion with colleagues  
  X   Other (Explain): Students' formal evaluations

- List below any fairly consistent patterns of colleague feedback.

*Dr. Sadid is a dedicated teacher and caring mentor.*

- A. Give the results of analysis of formal student evaluations.

Spring 2007

CE 464-01 36% of the students felt the class was excellent, 45% above average,  
17% average, 2% needs improvement

ENGR 223-01 *This evaluation is for the last 6 weeks of the course taught by David Finckelburg, an adjunct faculty. The course was assigned to be taught by Dr. Solomon Leung; however, I had to remove him due to students' complaints. Please see the attached letter.*

ME 665-01 80% of the students felt the class was excellent, 8% above average,  
12% average

Fall 2007

ENGR 350-01 66% of the students felt the class was excellent, 30% above average,  
4% average

- Give any fairly consistent patterns of informal student feedback.

Spring 2007

CE 464: Excellent course and professor

Fall 2007

Very good instructor  
Handouts were extremely helpful  
Could occasionally slow down

- If the evaluation differs significantly from your previous evaluation(s) of this faculty member, please summarize the differences.

Consistent.

- How has this faculty member responded to recommendations to the previous evaluations (if any?)

N/A

### RESEARCH-CREATIVE WORK

- Provide a bibliography of research and creative work published subsequent to the person's employment by Idaho State University. If a previous evaluation has been made, include here only those subsequent to the last evaluation.
  - H. Sadid, N. Ghag, "CFD and Finite Element simulation and Analysis of Dome of a Home subjected to Hurricane Forces," *Proceeding of the 2007 SEM Annual Conference & Exposition on Experimental and Applied Mechanics, Springfield, Massachusetts, June 4-6, 2007.*
  - H. Sadid, R. Wabrek, "A New Approach to Teaching Mechanics of Materials," *Accepted for presentation at the 115<sup>th</sup> Annual ASEE Conference and Exposition, Pittsburgh, PA, June 22-25, 2008. (the abstract was accepted but the paper was not submitted. It will be submit next year.)*
  - H. Sadid, N. South, N. Ghag, "Hurricane and Seismic Resistance and Environmentally Friendly Structures," *2007 ICE Conference, Idaho State University, Pocatello, Idaho, October 24-25, 2007.*

*I am working on three Journal papers based on the graduate students' work but there is no time to finish the work and submit for publication.*

- Present evidence of continuing reflective inquiry and other contributions
- *Degradation of aggregate in Road Construction.* "Idaho Transportation Department, PI, \$57,368, November 2007 (funded).
- *"Risk Analysis of Concrete Pavement",* Idaho Transportation Department, \$185,000, PI, June 14, 2007 (funded).
- *"Vibration Analysis and Design of Fan assembly Platform,"* Basic American Food Inc., PI, Blackfoot, Idaho, \$5,500 (funded). It was asked to donate this fund to the civil engineering program to be used for program promotion. A portion of the money is spent for developing webpage, brochure, and posters for the program mission statement and the educational objectives.
- *"Structural Inspection and Database Design,"* Holiday Inn Hotel, PI, Pocatello, Idaho, October 2006, \$1,500 (funded). Niraj Ghag, a graduate student was in charge of this project.

- "Computer Science, Mathematics, and Engineering Scholarships for Southeast Idaho," National Science Foundation, PI, \$400,000, August 2004 (funded). Have spent approximately \$100K during the Spring and Fall 2007 supporting 30 engineering, computer science, and mathematics students for tuition and fees.

Graduate Students:

- Spring 2007

1. Sergio Mendez
2. Niraj Ghag
3. Maylinn Rosales
4. Edwin Guerra

- Fall 2007

Graduate Students:

1. Venkateswar Miyapuram, Research Assistant
2. Sumanth Moparthy, Research Assistant
3. Edwin Guerra, Teaching Assistant

Undergraduate students

1. Casey Anderson, Undergraduate Research, (on hourly basis)
2. Ryan Simmons (Part of the semester), Undergraduate Research (on hourly basis)
3. Linda Tedrow from Geological Sciences (part of the semester), Graduate Research (on hourly basis)

Graduate students who graduated in 2007:

1. Sergio Mendez, "Experimental Study of Elastomeric Base Isolation Devices for Small Structures," December 2007.
2. Niraj Ghag, "Wind Load Capacity of a Monolithic Concrete Dom Structure Using CFD and FEA," June 2007.
3. Maylinn Rosales, "Waste Water Treatment expansion plan for the City of Hendrickson, Nevada." April 2007.

- In regard to research and creative work, how do you rank this faculty member in relation to the other members of your department?

*Dr. Sadid has been very active and quite successful recently in securing research funds. In addition, he is continuously seeking opportunities to maintain sustained research activities. He is planning to publish more journal articles, disseminating the results of his present research work.*

- How has the faculty member responded to recommendations made in the previous evaluations of his/her research and/or other creative contributions?

*Improved considerably.*



## PROFESSIONALLY RELATED PUBLIC SERVICE

- Provide specific indication of public service that the faculty member has rendered subsequent to employment at Idaho State University. If a previous evaluation has been made, include only those items subsequent to that evaluation.

### Community and Professional:

- *Taught Ethics and Professionalism for ENGR 120 and ENGR 496*
  - *Board Member, Portneuf Greenway Foundation (1998 – Present)*  
*Pocatello Greenway projects including construction of trails for bicycling, running, walking, and beautification of the valley. Involved with organizing events for fund raising, acquiring easement, and trail construction.*
  - *Helped with cleaning up the Pocatello Valley for Valley Pride*
  - *Volunteer for Habitat for Humanity.*
  - *Volunteer for MATHCOUNTS Competition (Chief Judge).*
  - *Volunteer for LEGO League Robotic Competition.*
  - *Vice Chair for the Structural Dynamic section of the Society of Experimental Mechanics (SEM).*
  - *Chaired a section in the annual conference of SEM.*
- 
- In this regard, how do you rank this faculty member with the other members of your department faculty?

*Dr. Sadid is very active in this regard and his significant contributions has been recognized by receiving the "Distinguished Public Service Award (University-wide), ISU, 2006-2007."*

## AWARDS, HONORS, AND SPECIAL RECOGNITIONS

- Specify and comment on any awards, honors, or special recognitions earned since the last evaluation.
  - *Distinguished Public Service Award (University-wide), ISU, 2006-2007.*
  - *The Most Influential Professor of Engineering, ISU, 2006-2007*
- 
- If this faculty member has a specific, significant administrative assignment within the department, describe it and evaluate his/her performance.

Served as Interim Chair for the Civil Engineering Program:

- *Architected an assessment plan for the program.*
  - *Prepared all the questionnaires and forms for the assessment.*
  - *Conducted survey of alumni and industry*
  - *Raised \$5,500 fund to use for the program promotion and recruitment*
  - *Hired a student to design a webpage for the program.*
  - *Hired Steele & Associates to design brochure for the program. The brochures are not printed yet.*
  - *Hired Steele & Associates to design a poster for the program mission and the educational objectives.*
  - *Held weekly faculty meetings and took the minutes.*
  - *Conducted faculty evaluations.*
  - *Hired three adjunct faculty to teach CE 436, ENGR 223, and ENGR 105.*
  - *Supervised Victor Godfrey, a graduate student who was hired to teach the Material and Measurement Lab (ENGR 223).*
  - *Familiarized the three adjunct faculty and the graduate student with ABET assessment process, helped develop an assessment plan for each course and closely supervised to conduct assessment for the courses.*
  - *Wrote the ABET interim visit report.*
  - *Met with ABET evaluator(s) to explain the improvements made in the program and the assessment after the ABET visit in the Fall of 2005.*
- 
- List any committee assignments.

University and College:

Current:

- *College Curriculum Committee*
  - *College scholarship Committee*
  - *ASEE Campus Representative*
  - *ISPE Student Advisor*
  - *Honors Program Committee*
  - *CoE Machine Shop Committee*
  - *College By-laws Committees*
  - *Distinguished Teaching Award Committee*
  - *Distinguished Public Service Committee*
  - *ASCE advisor for the Steel Bridge 2007*
  - *Sigma Xi, the Scientific Research Society (President)*
    - *Organized monthly presentations*
    - *Organized the Annual Spring Banquet*
- 
- Does this person have the generally recognized terminal degree for your field? Yes.

(If the answer is no, please explain.)

- Do you foresee any personal or professional factors which might limit this person's long term performance as a faculty member at Idaho State University? No (If yes, please explain.)
- Performance and recommendation:  

<u>X</u>	Satisfactory
<u>      </u>	Unsatisfactory
<u>      </u>	Reappointment for another probationary year
<u>      </u>	Non-reappointment
<u>      </u>	Terminal appointment
<u>      </u>	Tenured appointment
- In arriving at this recommendation, have you consulted with all the tenured and nontenured members of your department?        yes X no.

#### EVALUATION BY CHAIR

- Recommendation of the Chair of the Department  
Comments (A separate letter may be attached):

*Dr. Sadid taught an undergraduate course, a graduate course, and part of (8 weeks) another undergraduate course while serving as the Interim Chair of the CEE program during the spring 2007. In fall 2007, Dr. Sadid taught only one course – he was given two course releases ("buy outs") for reallocation of his time to a research contract, initiated earlier in the summer. In all the aforementioned courses, students' evaluations were, for the most part, excellent and some above average. In addition, students' comments were mostly very good to excellent. He was recognized as the "Most Influential Professor of Engineering" in 2006-07.*

*Dr. Sadid has initiated a couple of research programs in relation to pavements, sponsored by Idaho Transportation Department (ITD). In addition, as a PI for the NSF-CSEMS grant, he has been involved in overseeing the expenditure of the NSF grant and implementation of various pertinent tasks, designated for the computer science, mathematics, and engineering scholarships for southeast Idaho.*

*He published a paper in a proceedings of the SEM conference and two abstracts, one in ASEE annual conference and another at the Lemley ICE.*

*Dr. Sadid is actively involved in various community, university, and college committees and received the distinguished public service award for his dedicated efforts. As the Interim Chair of the CEE program during 2006-07, Dr. Sadid coordinated and made significant contributions in relation to the preparation of ABET self-study report and accomplished multitudes of other tasks, as outlined in this document.*

*In sum, Dr. Sadid continues to excel in teaching, very successful in securing research funds, and made significant contributions regarding service activities. In addition, he intends to disseminate the results of his current research in archival journals in the near future.*

M. Zoghi 4/17/08  
Signature Date  
Name: Mansoor Zoghi Chair, Dept. of CEE

#### FACULTY STATEMENT

I have read this annual evaluation by the chairperson of my department/unit, and I understand I have five (5) working days in which to respond to it in writing.

☒ I will **not** be responding to this evaluation. ☐ I will be responding to this evaluation.

Habib Sadid 4/17/08  
Signature of Faculty Member Date  
Name: Habib Sadid Dept. of CEE

#### EVALUATION BY DEAN

- Recommendation of the Dean of Engineering

☒ I concur with the chair's evaluation of this faculty member.

☐ I do not concur with the chair's evaluation of this faculty member.

#### Remarks:

Dr. Sadid continues to contribute to the instruction, service, and research missions of the CEE Department and the College of Engineering. His efforts at all levels are recognized and appreciated.

Richard T. Jacobson  
Signature of the Dean

4/18/08  
Date

### FACULTY STATEMENT

I have read this annual evaluation by the Dean of the College of Engineering, and I understand I have five (5) working days in which to respond to it in writing.

☒ I will not be responding to this evaluation. ☐ I will be responding to this evaluation.

Habib Sadid  
Signature of Faculty Member

4/22/08  
Date

Name: Habib Sadid Dept. of CEE

Annual Evaluation for: Dr. Habib Sadid  
Name of Faculty Member

2008  
Calendar Year

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RECOMMENDATION OF THE DEAN

- ☒ I agree with the chairperson's evaluation of this faculty member.  
☐ I disagree with the chairperson's evaluation of this faculty member.

Remarks:

PLEASE WORK WITH YOUR CHAIR AND COLLEAGUES  
TO RESOLVE YOUR CONCERNS AND HELP  
DEVELOP A DEPARTMENTAL WORKLOAD  
POLICY WITH APPROPRIATE WEIGHTING FACTORS.

  
Signature of the Dean

Date

4/10/09

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FACULTY STATEMENT

- ☐ I have read this annual evaluation by the Dean of the College and I understand I have five (5)  
working days from date of evaluation in which to respond in writing.  
☐ I will not be responding to this evaluation. ☒ I will be responding to this evaluation.

  
Signature of Faculty Member

Date

4/22/09

This evaluation contains 2 pages of response  
signed and stamped.

CONFIDENTIAL

ANNUAL FACULTY EVALUATION REPORT  
(To Be Completed by Department Chair or Equivalent)

PLEASE ATTACH ANNUAL FACULTY ACTIVITY REPORT

Faculty Name: Dr. Habib Sadid

Title: Professor

Evaluation Year:

- ☐ 1<sup>st</sup> year    ☐ 3<sup>rd</sup> year  
☐ 2<sup>nd</sup> year    ☐ 4<sup>th</sup> year  
☒ regular annual evaluation

Date of Hire:

\_\_\_\_\_  
(month/year)

Academic Contract:

- Full-time    Part-time  
☒ 9-month    ☐  $\geq 0.5$  fte  
☐ 10-11 month    ☐  $< 0.5$  fte  
☐ 12-month

Tenure Status (check one):

- ☒ Tenured    ☐ Tenure-Track    ☐ Non-Tenure Track

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SUMMARY OF DISTRIBUTION OF FACULTY MEMBER'S WORKLOAD EQUIVALENCY UNITS

Workload Distribution Agreed Upon  
at Last Annual Evaluation

12 Instruction  
12 Research/Scholarly/Creative Activity  
6 Professional Service  
\_\_\_\_ Clinical Practice/Patient Care  
\_\_\_\_ Administration  
30 TOTAL

Faculty Member's Report of Actual  
Workload Distribution for Year

12 Instruction  
13 Research/Scholarly/Creative Activity  
5 Professional Service  
\_\_\_\_ Clinical Practice/Patient Care  
\_\_\_\_ Administration  
30 TOTAL

Based on the College/Department Workload Policy weighting metric, please indicate your assessment of the accuracy of the workload distribution reported by the faculty member:

- ☒ I find the workload reported to be accurate  
☐ I do not find the workload reported to be accurate (Please Explain below)

Faculty Response:

*The Faculty Activity Report form and the Annual Evaluation Report to be prepared by the department chair, for the calendar year 2008, are substantially different from the evaluations performed in the preceding years. These documents were not communicated to the CEE faculty*

or at least to me prior to the distribution by Priscilla on February 10, 2009. There have been no discussions about these forms and workload policies at the department or the College levels. Indeed, there is no formal workload policy in the College or the CEE department.

The Annual Faculty Activity Report provided by the administration was something totally new this year which required a detailed activity report in twelve pages. The administration expected faculty to fill out these forms without the slightest guidance or communication to the civil engineering faculty members. Response to some of the questions in these forms required an access to a Faculty Workload Policy and a weighting metric, neither of which were provided.

Currently, to the best of my knowledge, the CoE and the CEE Department do not have such a weighting metric to provide to the faculty for use in reporting their activities. Certainly the administration needs such a rating metric to measure professional performance consistently, accurately, and fairly. How can the administration evaluate the faculty based on the expectations not communicated to them? Isn't it the administration's responsibility to come up with a workload policy for the College or the department that is acceptable to the faculty?

In my Annual Faculty Activity report, my answers to some of the questions are based on my personal judgment and may differ with those of another faculty member. How can the administration evaluate faculty in a consistent basis without an objective system?

The following are response to Dr. Zoghi's evaluation of my job performance for the year 2008.

1. Faculty workload Distribution:

On page two of the report, Dr. Zoghi claims that he found the workload reported by faculty to be accurate based on the College/Department Workload Weighing metric. As a senior faculty member in the College of Engineering (CoE) and the Civil and Environmental Engineering (CEE) Department, to the best of my knowledge, the CoE or the CEE department do not have faculty workload policy metric. During the Dr. Jay Kunze tenure, former dean of the CoE, the faculty evaluations were totally arbitrary and Dr. Kunze normally gave high salary raises to his inner circle and those who agreed with him. In the last three years, since Dr. Jacobsen assumed the dean's position, the situation has not changed much. The CoE and CEE Department still do not have faculty workload policy or weighting metric.

- On March 31, 2009, I sent an E-mail to Dr. Zoghi requesting a copy of the Faculty Workload Policy. Dr. Zoghi forwarded the e-mail sent earlier by the College administrative assistant, Priscilla with two attachments, the Faculty Activity Report form and a copy of the Faculty Annual Evaluation Report form (Attachment 1). Dr. Zoghi ignored my request for the CoE or CEE Faculty Workload Policies. In response to Dr. Zoghi's e-mail, I emphasized that the attachments did not include the Faculty Workload policies. Consequently, Dr. Zoghi sent me a copy of the Faculty Workload Policy Recommendation from the Faculty and Staff Handbook (Attachment 2) At this time, I wasn't sure if Dr. Zoghi knew what I was asking for or if he knew what a faculty workload policy matrix looks like. In response, Dr. Zoghi sent an e-mail to all CEE faculty asking them to submit their activity reports "right away" (Attachment 3).



- On April 8, 2009, in the CoE general faculty meeting, Dr. Jacobsen distributed a letter drafted to the chairs for recommendations (Attachment 4). In this letter, Dr. Jacobsen writes to Chairs "You need to meet with all the faculty in your department and negotiate the workload assignment for each person for the calendar year 2009". In this letter Dr. Jacobsen emphasizes that:

"1. Each member of the faculty must know his/her distribution of workload for the 2009 calendar year among the categories of teaching, research, service and administrative or other areas as appropriate."

"2. It must be clearly indicated to each person what is expected of each individual for the annual review of this period to achieve each of the designated merit ratings in the university merit system."

Dr. Jacobsen goes on to write: "This is the third year I have requested that this be done. If you do not feel that you are able or willing to do this, please let me know your reason in writing."

Clearly the CoE and the CEE program do not have a faculty workload policy.

## EVALUATION OF TEACHING (calendar year):

Indicate the information used in evaluation of this faculty member's teaching:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> formal student evaluations | <input checked="" type="checkbox"/> review of syllabus, exams, handouts, etc. |
| <input checked="" type="checkbox"/> informal student feedback  | <input type="checkbox"/> faculty member's self-evaluation                     |
| <input type="checkbox"/> classroom observation of teaching     | <input type="checkbox"/> discussion with faculty member                       |
| <input type="checkbox"/> peer evaluation of teaching           | <input type="checkbox"/> discussion with colleagues                           |
| <input type="checkbox"/> other:                                |   |

Summarize your assessment of the faculty member's teaching effectiveness, strengths, and weaknesses, and other relevant aspects of instruction.

*In accordance with the formal students' course evaluations, during the designated period, Dr. Sadid has attained excellent and/or above average nearly in all categories. In addition, students' feedback of Dr. Sadid's teaching effectiveness (present students and former students, via senior exit interview) has been positive. Professor Sadid is passionate about his teaching and is more than willing to help his students both inside and outside of classrooms.*

Is there a need for additional professional development in the area of teaching?

- ☒ No      ☐ Yes (please explain)

Comments:

### **Faculty Response:**

*This section of the evaluation doesn't show the results of the student's formal evaluations. If the students' input is not important in faculty's teaching evaluations, then, why are we conducting student evaluations?*

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## EVALUATION OF RESEARCH, SCHOLARSHIP AND/OR CREATIVE WORK:

Indicate the information used in evaluation of this faculty member's scholarship:

- |  |   |
|--|---|
| <input type="checkbox"/> Discussion with faculty member        | <input type="checkbox"/> Review of faculty member's self-assessment |
| <input type="checkbox"/> Input from colleagues                 | <input type="checkbox"/> Input from graduate/undergraduate students |
| <input type="checkbox"/> Publications                          | <input type="checkbox"/> Presentations, Performances, Shows, etc.   |
| <input checked="" type="checkbox"/> Grants, Contracts received | <input checked="" type="checkbox"/> Grants, Contracts under review  |
| <input checked="" type="checkbox"/> Work in progress           | <input type="checkbox"/> Other:                                     |

Summarize your assessment of the faculty member's research/scholarly/creative productivity:

*Dr. Sadid carried out one on-going research project (initiated in August 2007, through August 2008), a new research contract (from January 2008 through December 2008) and another NSF*

*educational grant that apparently was extended (no cost) for an additional year. Dr. Sadid received two course releases ("buy-outs") in spring 2008 to allocate his time on the aforementioned research projects. Dr. Sadid submitted two more research proposals during this period, which were not funded.*

*Dr. Sadid has co-authored one abstract, related to teaching, accepted for presentation at the ASEE 2009 National Conference.*

Is there a need for additional professional development in the area of research/scholarship?

☐ No                      ☒ Yes (please explain)

Comments: *Refereed publications.*

*Faculty Response:*

- In evaluating my research activities, Dr. Zoghi neglected to report the amount of money I brought to ISU through my research activities during the year 2008. My total grant productivity exceeded \$177,000 for 2008. This may be the highest grant productivity in the CoE for a single faculty member. While the administration constantly reminds the faculty of the importance of externally funded research to the financial well-being of ISU, Dr. Zoghi somehow neglected to report the amount of money I brought to ISU. Shouldn't this figure be important in the evaluation of a professor's research activities?
- Dr. Zoghi also neglected to report the number of graduate and undergraduate students I supervised and supported, with research grant money, during 2008.
- Dr. Zoghi's only concern was that I did not have "Refereed publication". During 2008, I worked extensively on the research to support a paper that has been accepted for publication in 2009 in the ASEE Proceedings, which are regarded as a refereed publication. In addition, I wrote three reports to ITD that exceeded 300 pages. Shouldn't this effort count for something? Furthermore, the reports submitted to ITD will lead to several future publications. Is publication in a refereed journal more important than the funds which enable faculty to conduct research? Am I expected to do them all at once?

I believe that the amount of grant money secured by a faculty member (as emphasized by the administration) and the number of graduate and undergraduate students supervised must be reported and be a factor in the faculty performance evaluations.

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## EVALUATION OF PROFESSIONAL (NON-CLINICAL) & UNIVERSITY SERVICE:

Indicate the information upon which this evaluation of service is based:

- ☒ Committee work – University, College, Department, etc.
- ☒ Committee work – professional organizations, Boards, Review Panels, etc.
- ☒ Other service activities related to profession, discipline, etc.
- ☒ Community service
- ☐ Other:

Summarize your assessment of the faculty member's service effectiveness, strengths, and weaknesses:

*Dr. Sadid is active and dedicated at all levels in relation to service endeavors, including the CEE Department, College, University, community, and national societies, as evidenced in his annual faculty activity report.*

Do you have any recommendations related to service activity:

- ☒ No                      ☐ Yes (please explain)

### Faculty Response:

*The university administration has been demanding that faculty members participate in national organizations and run for office in these national organizations. The administration neglects to mention that ISU does not have travel funds to support faculty participation in the national conferences of these organizations. In my activity report, it was reported that I was nominated for the ASEE Zone IV Chair position (now the results are out and I have been elected for the office). In the Faculty Annual Report, Dr. Zoghi fails to report this important achievement which is so highly encouraged by the administration. In addition to these activities, I have been involved with student service activities such as Steel Bridge Contest and Engineering Week. Why were these activities ignored? Do all faculty members in the program participate in these? Unfortunately the answer is: no.*

## ALUATION OF CLINICAL PRACTICE/PATIENT CARE (when applicable):

Indicate the information used in evaluation of this faculty member's clinical practice/patient care service:

- |   |  |
|---|--|
| <input type="checkbox"/> Faculty member's self-assessment   | <input type="checkbox"/> Discussion with faculty member  |
| <input type="checkbox"/> Input from colleagues  | <input type="checkbox"/> Input from professional and/or clerkship/rotation students; residents, etc. |
| <input type="checkbox"/> Input from practice site personnel, administrators, supervisors, other health care providers | <input type="checkbox"/> Other:  |

Summarize your assessment of the faculty member's effectiveness, strengths, and weaknesses related to assigned clinical practice/patient care responsibilities:

Is there a need for additional professional development in the area of clinical practice/service?

☐ No ☐ Yes (please explain)

Comments:

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**EVALUATION OF ASSIGNED ADMINISTRATIVE RESPONSIBILITIES:**

Identify below the assigned administrative title/responsibility of this faculty member:

Summarize your assessment of the faculty member's effectiveness, strengths, and weaknesses related to assigned administrative responsibilities:

Is there a need for additional professional development related to this faculty member's administrative responsibilities?

☐ No ☐ Yes (please explain)

Comments:

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Other Activities of Note:

Progress on faculty member's goals for evaluation year:

*No goals were identified at the time.*

Goals for next evaluation year:

*Dr. Sadid has set a goal of submitting papers for publications in journals, which is extremely important. Perhaps, it will be more helpful if he specifies the number of articles he intends to draft and submit for publication ("to be measurable" in terms of next year's annual evaluation). Also, it will be helpful to identify goals in relation to research (for instance submitting research proposals...), teaching, and service.*

**Faculty Response:**

*Please see the letter from Dr. Jacobsen to the Chairs (Attachment 4). Why is publication "extremely important" in Dr. Zoghi's opinion? Is it more important than bringing research funds to the University? Where has the University defined the importance of each activity assigned to faculty and rating for each activity?*

---

Do you foresee any professional or personal factors that might limit this person's long-term performance as a faculty member at ISU?

☐ No                      ☒ Yes (please explain)

Comments:

*This is to express my concern that over the past year, Dr. Sadid has repeatedly bypassed me for any departmental and faculty related issues. Furthermore, he continually accuses me of wrong-doing and referring to me and the Chairs of EE and NE Departments and the Dean of CoE as "incompetent" administrators, as evidenced in several representative e-mail messages (attached herein) he has circulated among all CoE faculty members. Professor Sadid's disrespectful proclamations such as: "...I have mentioned over and over, in my opinion, there is no leadership in the college. I strongly believe that Dr. Jacobsen along with his three Muskechairs are destroying the College." via e-mail correspondences to all CoE faculty and administrators as well the President and Provost, are unprofessional and disruptive. Furthermore, Dr. Sadid claims that he spends "40%" of his time "fighting the administration."*

*I will greatly appreciate it if Dr. Sadid follows the protocol, outlined in the ISU's Faculty/Staff Handbook in Part 4, Personnel Policies (enclosed herein) in the future should there be any perceived problem.*

Does this evaluation differ significantly from previous evaluations of this faculty member?

☐ No

☐ Yes (please summarize the differences)

Comments:

**Faculty Response:**

*In this section, Dr. Zoghi expresses his concern and writes: "over the past year, Dr. Sadid repeatedly bypassed me for any departmental and faculty related issues. Furthermore, he continually accuses me of wrong-doing and referring to me and the Chairs of EE and NE Departments and the Dean of the CoE as "incompetent" administrators". Dr. Zoghi has attached several e-mails distributed among the faculty and the administration.*

- *Evaluation of e-mails provided by Dr. Zoghi: Most of the e-mails provided by Dr. Zoghi were sent in 2009 and do not apply to this evaluation period (2008). There are only three e-mails in this stack which relate to the 2008 evaluation. These e-mails are dated January 24, 2008 and February 14, 2008, and August 8, 2008. In these e-mails, there is nothing to support Dr. Zoghi's claim that in the last year, I have bypassed him "repeatedly" and furthermore, "continually", accused him of "wrong-doing ". Here is my response to these two e-mails.*
  - *The e-mail dated January 24, 2008: This e-mail was sent to Dr. Jackson, Dean of the Graduate School, regarding a violation of the university rules by CEE Chair, Dr. Zoghi, and negligence on the part of CoE Dean, Dr. Jacobsen (Attachment 5). After pursuing my complaint through the chain of command with no result, I believe it was my responsibility to inform the Graduate School that the College administration and the CEE chair were cancelling required graduate course that were necessary for students' timely graduation, in violation of University policies. Both CEE chair and the CoE Dean ignored my direct complaints to them (Attachments 5).*
  - *The e-mail dated February 14, 2008: This e-mail was in regard to assigning someone to direct the CEE Graduate Program (Attachment 6). Based on the Chair's duties approved by the CoE faculty on March 9, 2006, directing the graduate program is the chair's responsibility. The chair is on twelve month contract and teaches only one course per semester while faculty are on nine month contract and normally teach nine credits per semester. In this e-mail, Dr. Ken Bosworth also supported my statement. In response to his e-mail, I brought up some other issues in the College including the issue of misuse of power by the administration.*

*In these e-mails, I did not find myself "repeatedly bypassing" Dr. Zoghi for departmental and faculty related issues. The only reason I have brought my concerns to the University administration*

*is that these concerns have been ignored at the Department and College levels. In addition, I was unable to find any instance of my accusing Dr. Zoghi of "wrong-doing". I did however remind him of University policies. Also, in these two e-mails, I did not refer to the chairs of the CE, NE, ME, and the CoE dean "incompetent". However, based on my observations, I have questioned their ability to administer the College and the programs. I hope that I am entitled to express my opinion, in particular, when I see activities that are contrary to the public interest. Second, the ISU administration has, over a long period, done things to provoke me. These well documented, provocative actions are now the subject of legal action.*

*I have never referred to any of these administrators "incompetent". That is a false accusation. However, in the past, I have pointed out some of the mistakes made by the administration. For example, when the Dean held the College retreat six week into the semester, leaving the College without a clear vision of the academic year for nearly half a semester, I spoke up. When a chair sent an e-mail at 10:35 PM asking faculty members to submit a class schedule by midnight and two minutes later sent another e-mail, asking faculty to give Priscilla the TV courses schedules by noon in the next day, I spoke up. When, a chair neglects to learn the College's Academic Standard Policies and advises student's without paying attention to prerequisites and co-requisites, and then insults me when I dismiss an unqualified student from my class, I spoke up. I believe it is the responsibility of a senior faculty member to express concerns regarding College and Department procedures. How else can the University improve itself?*

*Dr. Zoghi accuses me for being "disrespectful" for expressing my opinion about the CoE and the CEE department's administrations' performance. Based on my observation and in discussion with many other faculty members, and in reference to the above examples, I believe that there is little or no leadership in the College of Engineering or in the CE, NE, and EE Departments. I do believe that Dr. Jacobsen and his three chairs, with whom he meets regularly behind closed doors and makes decisions about the College without faculty involvement, are damaging the College. This administration has created conflict among faculty and has isolated the faculty from the administration. With no proper channels for communication, the moral of the faculty is dangerously low. The problems in the College of Engineering have been reported to the upper administration repeatedly. In addition, many of these issues were reflected in the faculty's evaluation of Dr. Jacobsen's job performance last year. Unfortunately, the upper administration has failed to respond to faculty concerns.*

*Dr. Zoghi reports "Dr. Sadid claims that he spends "40%" of his time "fighting the administration". This statement was taken totally out of context. My original comments indicated that I was forced to spend 40% of my time defending myself against unwarranted attacks by the administration. As an example, it was a waste of my time to spend my entire weekend responding to this biased and inaccurate evaluation.*

*Finally, Dr. Zoghi asks me to follow the protocol, outlined in the ISU's Faculty/Staff Handbook in Part 4, Personnel Policies with a copy enclosed. Part 4 of the Faculty/Staff Handbook deals with the Personnel Policies and in particular with the Internal Grievance Procedures. I am not sure why Dr. Zoghi has sent me this section. How is it relevant to my annual evaluation?*



**CHAIR'S EVALUATION OF FACULTY MEMBER'S OVERALL PERFORMANCE (check one)**

- ☐ **Performance is Exceptional (5)** – extraordinary performance, top 10 percent of faculty in unit; excellent performance, well beyond that required relative to the faculty member's position description/workload assignment.
- ☐ **Performance is Consistently Above Expectations (4)** – consistently exceeds performance standards in all areas; performance in top 25 percent of faculty in unit; well above average relative to the faculty member's position description/workload assignment.
- ☐ **Performance is Above Expectations (3)** – exceeds performance standards in many areas; performance is above average, better than expected, exceeds expectations relative to the faculty member's position description/workload assignment.
- ☒ **Performance Meets Expectations (2)** – meets performance standards; performance is average, at a level expected relative to the faculty member's position description/workload assignment.
- ☐ **Performance is Below Expectations (1)** – denotes performance that is less than that expected relative to the faculty member's position description/workload assignment, and means that improvement is necessary. The chair and faculty member must develop a plan for improvement in the areas that fall below expectations.
- ☐ **Performance is Unacceptable (0)** – denotes performance that consistently is below expectations relative to the faculty member's position description/workload assignment; and performance that is not acceptable and/or is inconsistent with the conditions for improvement specified in previous annual evaluations.

***Faculty Response:***

*The review of my job performance as reported in the Annual Faculty Activity Report reveals that my performance for the year 2008 in teaching, research, and service has been quite good. However, Dr. Zoghi mysteriously arrives at the conclusion that my performance meets expectations.*

*I truly do not know what the College or the CEE Department expectations were. I have done everything to the best of my ability. I have taught well, brought in grants amounting to over \$177,000, and supervised four graduate students and one undergraduate student in research work. I also supervised one independent study and another cooperative education course. In addition, I developed a brochure for the CEE Department, and supervised the ASCE students in the Steel Bridge design and construction. I have been active in professional organizations at the local and national levels, and in 2008 I ran for national office (now elected). Moreover, I am one of the few faculty members in the University who spends a lot of time in public service. Indeed, I was the recipient of the 2007 Distinguished Public Service Award.*

*I typically work more than 80 hours per week. If with this performance, I am only just meeting ISU expectations, I would like to know what the standards are for "exceeding expectations".*

*Compare my results to those of my colleagues including College administrators. How could any honest, unbiased administrator classify my efforts as merely "meeting expectations"?*

**Chair's Recommendation:**

☒ Reappointment      ☐ Non-reappointment      ☐ Terminal appointment

**In arriving at this recommendation, with which groups of faculty in the department or unit have you consulted? (check all that apply)**

☒ Tenured      ☐ Full-time, non-tenure track  
☐ Tenure-track      ☐ Part-time, non-tenure track  
☐ Non-Tenure Track      ☐ None

\_\_\_\_\_  
Signature of Department Chair

7 April 2009  
Date

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**FACULTY STATEMENT**

☐ I have read this annual evaluation by the chairperson of my department, and I understand I have five (5) working days from date of evaluation in which to respond in writing.

☐ I will **not** be responding to this evaluation.      ☒ I **will** be responding to this evaluation.

*Habib Sahil*  
Signature of Faculty Member

4/14/09  
Date

*I have included my responses after each report by the chair. This Annual Evaluation includes six (6) attachment in 16 pages.*

Attachment 1

**Subject:** Faculty Workload Policy

**From:** Habib Sadid <sadihab@isu.edu>

**Date:** Tue, 31 Mar 2009 10:57:35 -0600

**To:** "M. Zoghi" <mzoghi@isu.edu>

**CC:** "Dr. Richard Jacobsen" <jacorich@isu.edu>, Barbara Adamcik <adambarb@isu.edu>, ffaculty@mm.coe.isu.edu

Dr. Zoghi,

Would you please send me a copy of the CoE or CE Department's workload policy needed to fill out the faculty activity report? Your prompt reply would greatly be appreciated.

Regards,  
Habib

Subject: Re: Workload Policy

From: Habib Sadid <sadihab@isu.edu>

Date: Tue, 31 Mar 2009 13:31:17 -0600

To: "M. Zoghi" <mzoghi@isu.edu>

CC: Jacobsen <jacorich@isu.edu>, Barbara Adamcik <adambarb@isu.edu>, ffaculty@mm.coe.isu.edu, Bradley H Hall <hallbrad@isu.edu>

Dr. Zoghi,

I hope you understand what faculty workload policy matrix would look like. What you have sent is not faculty workload policy matrix. I don't know what five administrators have been doing here for the last two or three years, but to the best of my knowledge, the CoE has not developed bylaws or faculty workload policies. Your demand to submit faculty annual evaluation and faculty activity report without providing guidance and workload policies is not appropriate. Could you please just say that the CoE does not have faculty workload policies?  
Habib

M. Zoghi wrote:

Dr. Sadid,

Attached please find the latest university workload policy, distributed to all faculty sometimes last semester.

MZ

Habib Sadid wrote:

Dr. Zoghi,

I do have the forms attached and I am trying to fill out these forms which require a faculty workload policy for the CoE or the CE program. Without the faculty workload policies, it is impossible to come up with a uniform and consistent evaluation of the faculty. If you take a look at these forms, you will realize what there is no workload policies in this e-mail. Please take a look at the attachments one more time. There are two attachment in that e-mail, a faculty activity report form and faculty annual evaluation form. I couldn't find the faculty workload policies in the Priscilla's e-mail! Does the CoE have faculty workload policies? How does administration evaluate faculty on a consistent basis if there is no workload policy. I don't know what other faculty members are doing but I am unable to complete these forms without workload policies. Please let me know what to do. Thanks.

Habib

M. Zoghi wrote:

Dr. Sadid,

I am forwarding Priscilla's e-mail along with relevant workload policy documents, that were sent to the CoE faculty on 2/10/09.  
Kind regards,

MZ

Dr. Zoghi,

Would you please send me a copy of the CoE or CE Department's workload policy needed to fill out the faculty activity report? Your prompt reply would greatly be appreciated.

Regards,  
Habib

Priscilla Goldbeck wrote:

: Attached are the forms that need to be filled out for your evaluations  
: (except for the Chairs). These are due to the Dean by March 16th in  
: order for him to have time to review them before they are due in the  
: Provost's office on April 6th.  
: Steve, Dan, Bruce and Alba: ignore this email since yours are already  
: in the works and due earlier.

Thanks,  
Priscilla

---

Ffaculty mailing list  
[ffaculty@mm.coe.isu.edu](mailto:ffaculty@mm.coe.isu.edu)  
<http://coe.isu.edu/cgi-bin/mailman/listinfo/ffaculty>

This attachment repl<sup>y</sup> to the Attachment # 2  
in the previous response

**Subject:** Workload Policy

**From:** "M. Zoghi" <mzoghi@isu.edu>

**Date:** Tue, 31 Mar 2009 13:18:00 -0600

**To:** Habib Sadid <sadihab@isu.edu>, Jacobsen <jacorich@isu.edu>

Attachment # 2

Dr. Sadid,

Attached please find the latest university workload policy, distributed to all faculty sometimes last semester.

MZ

Compare with the date of  
ISU workload policy (3/16/2009)

Habib Sadid wrote:

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Steve, Dan, Bruce and Alba: ignore this email since yours are already in the works and due earlier.

Thanks,

Priscilla

-----  
Ffaculty mailing list  
Ffaculty@mn.coe.isu.edu  
http://coe.isu.edu/cgi-bin/mailman/listinfo/ffaculty

Manoochehr Zoghi, Ph.D., P.E. <mzoghi@isu.edu>

Professor and Chair

Department of Civil and Environmental Engineering

Idaho State University

Faculty Workload Policy working draft 3-16-09.pdf	<b>Content-Type:</b> application/pdf <b>Content-Encoding:</b> base64
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## Idaho State University Faculty Workload Policy

**A. Policy** [The current policy appears in Appendix E—should be in a more prominent place.]

Idaho State University will maintain a general policy describing faculty workload that is applicable to all categories of faculty appointments (i.e., academic tenured, tenure track, and non-tenure track; and professional-technical non-tenure track). This policy will be subject to periodic reconsideration and revision at five year intervals or as deemed necessary by the ISU Faculty Senate and revision by the ISU Faculty Senate and the University administration. This policy identifies and describes categories of faculty work and these guidelines are to be followed when assigning each faculty member's workload or for equalizing workloads among department/unit faculty members. Additionally, it is intended to provide a means for recognition and documentation of the work that faculty do.

Workload as defined herein is the total effort rendered to the university by faculty in instruction, research/scholarship or creative activities, professional service, and/or administrative activities. The allocation of workload equivalency units to each of these components of faculty work is determined annually by mutual agreement between the faculty members and their chair and/or dean. The number of workload equivalency units allocated to instruction, research/scholarship/creative activities, professional service, and for some faculty, administration, will vary, but the total must add to 15 each semester for full-time 9-month faculty. The faculty members' college, department and discipline norms, and type of faculty appointment (e.g., tenured/tenure-track, or non-tenure track clinical, research, lecturer, and professional-technical) will be considered in assignment of workload in each area.

The expectation for tenured and tenure-track academic faculty at ISU is no more than nine workload units of instruction, at least four workload units of research/scholarly/creative activity, and no more than two workload units of professional service. Tenured faculty who are not actively engaged in research/creative activity, or extensive university service, may negotiate the assignment of more than nine workload units of instruction. Tenured faculty with an unusually heavy service or scholarly load may negotiate less than nine workload units of instruction. The expected distribution of workload units for non-tenure track faculty appointments will be determined by the type of appointment. For example, clinical faculty will have increased focus on didactic and clinical instruction and professional service, and less emphasis on scholarly activity; research faculty will focus primarily on externally funded research projects and grant writing, with minimal teaching responsibilities; and lecturers and professional-technical faculty may have 12 workload units assigned to instruction each semester, with the remaining 3 workload units in service. In addition to instruction, research/creative activity, and service, faculty may be assigned administrative responsibilities, which must be allocated within the total workload units.

Faculty will complete an annual Faculty Activity Report, based on the previous calendar year's activities, as part of the annual evaluation process. Each department chair will prepare an annual faculty workload summary report and forward a signed copy to the College dean. The department report should contain the following information for each faculty member: name, rank/title, full time equivalency (FTE), contract, tenure status; and by academic semester, the assigned workload components, including instructional credit hours assigned, and the total workload equivalency units for each of the relevant components – teaching, research, service,



administration. Each college will compile an annual workload report containing the assigned workload of faculty by department, and submit the report to the Office of Academic Affairs. The summary of each faculty members' workload is to be included as part of the annual and periodic performance evaluations, and evaluation for promotion and/or tenure. Faculty workload history will be part of the personnel record of each faculty member.

#### ***B. Rationale***

Institutions of higher education are required to establish a faculty workload policy that meets the criteria of their governing body (i.e., Idaho State Board of Education) and regional accrediting body (i.e., Northwest Commission on Colleges and Universities). A university workload policy should be flexible and contain the important attributes of accountability by faculty members and administrators to colleagues, students, the profession at large, and Idaho's citizens

Idaho State University is classified by the Carnegie Foundation for the Advancement of Teaching as a doctoral research university (DRU). Doctoral-granting institutions are classified as doctoral research, high research, or very high research universities based on the total level of research and development activities and expenditures, number of faculty in the sciences and engineering, and number of academic doctoral degrees conferred. The expectation for tenured and tenure-track faculty at ISU requires quality teaching and significant expenditure of effort in research/scholarly/creative activities.

The workload assignment of faculty impacts the commitment of university resources that are used to execute the goals and mission of the university, which are clearly defined within the ISU Strategic Plan. More important, the ability to advance the university's national stature largely depends upon the effective use of faculty time and effort directed toward high quality instruction, research/scholarship, service, and/or administration. Therefore, it is critical that faculty governance within colleges and departments establishes clearly defined workload expectations and measures that lead to high quality performance in all aspects of faculty work germane to each discipline. Finally, evaluation and/or promotion of faculty must include the documentation of faculty performance within each area of the assigned workload.

#### ***C. Purpose and Scope***

The policy set forth herein is intended to serve as a general recommendation for the assignment of faculty workloads at Idaho State University. Each individual's workload should be negotiated and subsequently evaluated within (1) the requirements and allowances stated in the contract which that faculty member signed with the University and the State Board of Education, (2) the set of professional expectations of the professoriate as a whole and the academic discipline which that faculty member serves (i.e., the "norms" for that profession or discipline), and (3) the context and normal operations of the college, department, or academic unit of which that faculty member is a part. Each college and department will further refine, implement, and maintain a workload policy that is consistent with the University's policy and one that reflects the unique and specific needs and obligations of its own faculty.

This general university policy is intended to provide a broad definition of faculty members' responsibilities, duties, and expectations. It is acknowledged that, while fulfilling the academic mission of each faculty member's college and department, the major components of faculty workload (teaching, research/scholarship/creative activities, service, and/or administration) may be insufficient in defining a faculty member's responsibilities. Nonetheless, for the reasons

stated above, this policy generally should apply to all faculty members at ISU with some exceptions (e.g., the faculty of the University Library, whose responsibilities may differ significantly from those of the general university faculty; research faculty paid wholly or partially from extramural funding; or clinical faculty paid partially from a clinical practice site). Finally, the intent of this policy is to provide guidance to deans and department chairs in allocating workload for the department, and to satisfy the requirements of accountability for both state and federal governmental agencies to which the University reports, and the citizens of Idaho, whom the University serves. There may be instances in which adjustments in faculty workload may impact temporarily the base salary of faculty (e.g., addition of administrative responsibilities with additional salary). Such faculty workload adjustments should include articulation of the terms and conditions of the adjustments, and be approved by the chair, dean, and Provost/Vice President for Academic Affairs.

It is required that each department/college develop clear criteria and rationale within each component of the workload. While it is acknowledged that wide differences exist in the obligations and operations of the University's colleges and in the responsibilities of its various categories of faculty appointments, generally the 15 equivalency units of effort should be apportioned within the categories of activities outlined below. More specific criteria may be established for any of these general classes of workload activities by the faculty of each college or department. When circumstances dictate, the relative allocation of time and effort expended in any of the major categories of faculty work may deviate from that generally recommended under this policy in order to meet the needs of the University, college, department, and faculty member. When this occurs, new workload assignments should be reached by mutual agreement of the affected faculty members and their respective department chairperson.

No faculty workload assignments should be made that conflict with a member's departmental faculty evaluation standards or promotion and tenure policies. All should be mindful that concentration of faculty effort in one component of work to the near-total exclusion of effort in the other components, except for specific faculty appointments (e.g., research and lecturer) is discouraged under this policy, and every faculty member should be given the opportunity to contribute in measurable ways to the teaching, research/scholarship/creative activity, professional service, and, for some faculty, the administrative functions of the University.

1. **Instruction:** As defined here, instruction includes the teaching, supervisory, and training functions necessary to fulfilling the academic mission of a faculty member's department and discipline, and includes, but is not limited to: (a) graduate/professional and undergraduate coursework, (b) the supervision and direction of students' scholarly works, including but not limited to research papers and theses/dissertations, fine arts works and performances, clinical experiences and student teaching, and (c) other activities such as student advising necessary for students to complete their degree and program requirements at ISU. Accordingly, as determined by the academic unit, the assigned teaching load per semester for tenured and tenure-track faculty ordinarily should consist of no more than nine equivalency units. The workload expectation for lecturers and professional-technical education faculty as determined by their academic unit normally is 12 equivalency units of instruction each semester, with a clear requirement for significant service to the department or college.

For purposes such as reporting time and effort to various extramural funding agencies, or for obtaining release time from instructional duties a faculty member is obliged to perform under the stated or implied terms of his or her contract, the equivalency units of effort in instruction

may be converted to percent of total effort. For example, faculty members requesting release from one or more equivalency units of instruction may be required to compensate their department from a grant or other funding source to cover the cost of paying an adjunct or other faculty member to teach the course(s).

2. **Research, Scholarship, or Creative Activities:** These are commonly acknowledged as activities related to: original investigation and discovery, translational research, the development of improved technologies, creative performance, original composition and academic writing, the investigation and improvement of pedagogy, the interpretation and integration of knowledge, and like activities. Recognition of the great diversity of activities associated with research and scholarship in the varied disciplines represented at Idaho State University requires that each college/department or program must develop and include in its workload policy, metrics for assignment of equivalency units for productivity in research and other scholarly activity. For tenured and tenure-track faculty a minimum of four equivalency units of effort in research or other scholarship activity is expected. The expectation for faculty with research appointments is nine to twelve equivalency units of sponsored research activity, with the remaining three to six equivalency units allocated to instruction and/or professional service.
3. **Professional Service:** Effort allocated for the purpose of fulfilling faculty service functions include, but is not limited to: serving on various departmental and University standing and ad hoc committees and councils, serving as Graduate Faculty Representative (GFR) for graduate students outside the faculty member's immediate department or discipline, serving professional societies and organizations in one's discipline serving in a professional capacity when addressing public and community needs, serving as a faculty advisor for student organizations, as a faculty mentor, and some forms of academic advising. Tenured and tenure-track faculty are expected to provide no more than two workload equivalency units of such service. Under certain circumstances (e.g., chairing a major institutional committee, Faculty Senate, Curriculum Council) additional professional service equivalency units may be negotiated with the department chair and college dean.
4. **Patient Care Services:** An important, additional category of service is that performed by faculty who have professional practice responsibilities and/or who provide other clinical and/or patient care services as part of their assigned departmental workload. Professional service workload equivalency units for clinical faculty may exceed that expected of tenured/tenure-track faculty (i.e., greater than two equivalency units of effort), particularly when contracted by a practice site to deliver clinical services.
5. **Administration:** Faculty may be assigned administrative responsibilities as part of their workload. Such assignments may include, but are not limited to, serving as department chair, assistant or associate chair, program director, center director, assistant or associate dean, student advisor for a college or large department, chair for special institutional projects (e.g., accreditation self-study), Clinical Coordinator or Supervisor, and other such administrative work. Equivalency units allocated to such administrative assignments will be determined by the college dean or in certain instances by the Provost/Vice President for Academic Affairs, in conjunction with the faculty member.

#### **D. Calculation of Workload Equivalencies for Instruction**

An equivalency unit of instruction does not necessarily equal a semester credit hour. The equivalency units assigned to a course depends on the course level, contact hours, number of students, type of course, and many other factors. Each college is required to develop an equivalency unit model that fits within the type of instruction provided. Credit for instruction workload equivalency units will not be allocated for overload courses or other instructional activity that includes additional compensation (e.g., stipend for Early College course supervision).

A number of factors should be considered in the assignment of workload equivalency units to instruction-related activities. Each college, division, and/or department will develop a weighting system that best fits the courses taught by its faculty. The following factors are among those that may be considered in assignment of a weighting metric to instruction-related activities. This model for calculating instruction equivalency units shall be reviewed every five years. The review shall include investigation of models currently in use at other universities and higher education systems and a survey of faculty regarding the model's effectiveness.

1. **Graduate/Professional Program Instruction:** For weighting of graduate and professional courses, consider the following: number of students enrolled, type of instruction (e.g., primarily lecture, guest speakers, seminar, student presentations) and any other factors that may reflect the time and effort expended by the instructor of record.
2. **Laboratory-Type Courses:** In assigning weight to regularly scheduled, academic laboratory and clinical lab courses; physical activity courses; studio art; studio music instruction; primary music performance organizations, such as ensembles and marching bands; off-campus field experiences/labs; and professional-technical combined lecture/lab courses, consider the instructor's time and effort and weekly contact hours in assigning equivalency units to these type of experiential courses.
3. **Supervision of Student Practice:** For supervision of student teachers, clinical clerkship/practicum supervision, intern supervision, and other such courses, assignment of equivalency units should reflect the total number of students being supervised at one time, length of the course (e.g., 6-week clerkships, semester-long student teaching, etc.), and other such factors that take into account faculty time and effort in a semester.
4. **Honors Program Courses, Individual Research Projects, or Independent Study:** Assignment of equivalency units for supervision of undergraduate student seminar courses, honors courses, individual instruction courses (e.g., in the arts), and individual research projects, should be weighted less than the total credit hours for the course (e.g., 0.1 or 0.2 equivalency units for each semester credit hour). In no case will individual instruction in a single course generate more semester credit hour equivalence than if the course were taught as a regularly scheduled, organized course.
5. **Thesis or Dissertation Supervision and Committee Membership:** Credit for supervision of students actively engaged in graduate thesis or dissertation research shall be granted to the chairperson of the thesis or dissertation committee and to a lesser extent, to the remaining committee members. The amount of credit awarded each semester should be weighted based on the number of student credit hours. Whenever the GFR is also deeply involved in guiding the student throughout the thesis/dissertation process, appropriate weighting is to be allocated.

6. **Advising of Undergraduate and Graduate Students:** Faculty who are formally assigned a large number of undergraduate and graduate students to advise each semester may be granted instruction credit. One equivalency unit of instruction may be granted based on the total number of advisees (the exact number will be determined by the department or college).
7. **Class Size:** For academic courses, workload credit may be proportionally increased for teaching a large regularly scheduled undergraduate class that requires extensive grading or evaluation of students' work by the faculty member, or decreased for a low enrollment regularly scheduled undergraduate class. The college and/or department determine what weighting factors to assign based on number of students enrolled and course credit hours).
8. **Proportional Credit for Multiple Instructors:** When more than one instructor participates in teaching a single course, the workload credit is proportioned according to the effort expended by each instructor (to total 100%).
9. **Coordination of Courses:** A faculty member who coordinates several sections of a single course, serves as a coordinator for a team-taught module in a clinical program, or other such course administrative responsibilities may be granted additional equivalency units of instruction (the department or college will determine the equivalency units to be allocated).
10. **Joint Undergraduate/Graduate Courses:** Joint undergraduate/graduate (e.g., 4xx/5xx) courses scheduled for the same time are not counted as two separate courses in calculation of instructional workload. Additional weight may be assigned, based on the credit hours for the course and the number of students enrolled. The college and/or department will determine the adjustment factor for these courses.
11. **Courses Taught Off-Campus:** For courses that are taught at least 40 percent time face-to-face at an off-campus location, additional weight may be assigned based on the distance faculty members must travel from their home campus. The weighting factor to be applied will be determined by the college and/or department. If a faculty member teaches more than one course on the same day(s) at the off campus site, the weighting factor will apply to only one of the courses (the course with the largest credit hours).
12. **Courses Taught Online and via Distance Learning:** Additional weight may be allocated for courses taught online and distance learning, based on the number of students enrolled and other factors related to course delivery. The weighting factor to be applied will be determined by the department faculty and college dean.
13. **Insufficient Enrollment:** A reduction in teaching workload, with concomitant increase in research and/or service workload may be granted temporarily if assigned classes do not materialize because of insufficient enrollment and additional classes or other instructional duties cannot be assigned to the faculty member. This exception may be granted for two consecutive semesters only for any particular faculty member.
14. **New Faculty Members:** At the recommendation of the department chair, and upon approval of the dean, up to three equivalency units of workload credit for each of two semesters may be given to a newly-appointed faculty member during the first year of employment for the purpose of developing instructional materials for courses the faculty member will teach in subsequent semesters, or for additional research efforts. The amount of equivalency credit allocated to new faculty is dependent on the total teaching load for the

department, and should not result in an unpaid overload for department faculty. New tenure track faculty should not be assigned service duties in the first year.

15. **Course Development:** At the recommendation of the department chair, and upon approval of the dean, instructional workload credit may be granted to a faculty member involved in the creation of a new course, new course format, or significant new course materials. The amount of workload credit will be determined jointly by the faculty member, chair, and dean.
16. **Clock-Hour Basis:** Instructional workload equivalents for faculty members holding professional-technical education (PTE) rank may be determined on a credit hour or clock-hour basis. Determination of the number of credit hours taught per semester and/or the number of hours of instruction-related activities per week for full-time employment will be identified in the College of Technology workload policy.
17. **Credit Granted by the Dean and/or Provost:** Academic workload credit may be granted for additional activities not specified above, such as major college recruiting and/or advising responsibilities, professional development to improve pedagogy as required by a formal remediation plan approved by the dean and chair, preparing major documents in the fulfillment of programmatic needs or accreditation requirements, or for other duties performed in the best interest of the institution's scholarly activities or instructional programs as determined by the dean and Provost.

#### **E. Compliance Assessment**

Faculty workload assignment will be documented in a faculty member's annual plan agreed upon by the faculty member and his or her unit head before the start of the contract year. The annual plan may be revised if and when unforeseen circumstances arise that require changes in the faculty member's workload. Faculty members' compliance with their assigned academic workload requirements will be assessed as part of the annual evaluation process and time and effort report. Faculty will complete a time and effort report each semester, as well as provide a summary of total workload activity as part of their annual evaluation. If a faculty member is found to be out of compliance, the chair and dean, in discussion with the faculty member, shall take appropriate measures to ensure workload requirements as outlined in this policy are met in the future.

Attachment # 3

I have been having computer problems & I'll get this e-mail later on. All CEE faculty have received this e-mail.

Habib Sadiq

4/14/09

Dr. Richard Jacobsen

Item #9B

Chairs,

You need to meet with all the faculty in your department and negotiate the workload assignment for each person for the calendar year 2009. You may use whatever format you wish to record these assignments, but two aspects must be apparent:

1. Each member of the faculty must know his/her distribution of workload for the 2009 calendar year among the categories of teaching, research, service and administration or other areas as appropriate.
2. It must be clearly indicated to each person what is expected of each individual for the annual review of this period to achieve each of the designated merit ratings in the university merit system.

This is the rough equivalent of letting the students in your classes know what is expected for an A, B, or C grade in the course and providing an assignment sheet or syllabus to let students know what coverage is anticipated. It goes without saying that such agreements should be signed by both faculty and you as chairs to avoid misunderstandings, and that when unforeseen circumstances occur that change the workload assignments the documentation should be modified by agreement to account for the changes.

By copy of this message, I am informing the faculty of this requirement. Please let me know by email when this has been accomplished for the faculty who report to you, and send me a copy of the workload agreement for each person and one to Priscilla Goldbeck for use in the annual review. This is the third year I have requested that this be done. If you do not feel that you are able or willing to do this, please let me know your reasons in writing.

Jake



Attachment 5

**Subject:** Status of MS Program in Civil Engineering

**From:** Habib Sadid <sadihab@isu.edu>

**Date:** Thu, 24 Jan 2008 14:16:49 -0700

**To:** "Dr. Richard Jacobsen" <jacorich@isu.edu>

**CC:** Tom Jackson <tjackson@isu.edu>, naiduds <naiduds@isu.edu>, "M. Zoghi" <mzoghi@isu.edu>, Habib Sadid <sadihab@isu.edu>

Dear Dr. Jacobsen,

I am writing to inform you of the status of our Masters program in Civil Engineering. On Thursday, January 3, in a meeting in your office, in the presence of Dr. Naidu, I mentioned that canceling the program's required courses and combining a 3-credit 6XX-level course with a 1-credit 4XX-level course amounted to violations of University policies, and significantly undermined the quality of our graduate program. You and Dr. Naidu both agreed. Here is the current status of the program.

The Masters program in Civil Engineering requires four core courses:  
 CE 531, Advanced Mechanics of Materials, 3 credits, offered in Fall  
 CE 664, Dynamics of Structures, 3 credits, offered in Fall  
 CE 665, Finite Element Analysis, 3 credits, offered in Spring  
 CE 667, Advanced Structures Lab, 3 credits, offered in Spring

In addition, the Graduate School requires 15 credits of 6XX-level courses for graduation (6-cr. Thesis, 2-cr. Seminar, and 7 credits of 6XX-level courses). In 1999, when I proposed this program, the three 6xx-level CE courses were intended to meet (exceed) the Graduate School's requirements.

Last fall, we canceled CE 664 and this Spring, we have canceled CE 665 and have combined CE 667 with a 1-credit undergraduate course, CE 467. We have graduate students who are planning to graduate with a master's degree from ISU without having completed the required courses for the program and without having sufficient 6xx-level courses to meet the Graduate School's requirement. Lacking CE 664 and CE 665, the two most important courses for MSCE graduates, these students will not have the even the minimum education normally expected of a MSCE graduate. One of the graduate students, Edwin Guerra, who earned his BS at ISU, has been asked to petition out of CE 667, since he had CE 467 as an undergraduate course; the other 5 graduate students are sitting in CE 467.

Edwin Guerra is an excellent student, fully capable of competing at other universities with strong master's programs. I encouraged Edwin to stay here at ISU for graduate studies. I now believe I did him a disservice. It was quite embarrassing a couple of weeks ago when I was obliged to inform Edwin and other students that we did not have CE courses for them to take in spring 2008. Currently, Edwin has signed up for DANC 390, ANTH 594, and MATH 522. None of these courses are required for the MSCE program, and no one would argue that dance, anthropology, and mathematics courses constituted graduate level courses in civil engineering. The other graduate students are taking 4XXg courses, courses they completed at their undergraduate institutions.

I truly think that the College's approach to engineering graduate programs is hurting current students and will, in the long term, ruin ISU's reputation in the engineering community. This group of students will not meet either the program or the Graduate School requirements for graduation. How can a faculty member, in good conscience, encourage our undergraduate students to stay here for graduate studies? Knowing that we offer substandard graduate programs, how can faculty members honorably recruit BS graduates of other universities? To do so would be unethical and unprofessional. As ISU attempts to enhance its research activities, these weak graduate programs represent a step backwards.

Best regards,  
Habib Sadid, Ph.D., PE  
Professor of Civil Engineering  
Idaho State University

Attachment 6

Subject: Re: Graduate Program Director  
From: Habib Sadid <sadihab@isu.edu>  
Date: Thu, 14 Feb 2008 11:41:34 -0700  
To: "M. Zoghi" <mzoghi@isu.edu>  
CC: ffaculty@mm.coe.isu.edu, "Dr. Richard Jacobsen" <jacorich@isu.edu>

Dr. Zoghi,

Thank you for asking me to serve as a Graduate Program Director for the CE program. I created the MS program in Engineering Structures and Mechanics in 1999 and served as coordinator up until 2006. During that time there was no departments in the CoE and no chairs for the programs. During the Spring of 2006, we developed Chair's duties which was approved on March 9, 2006 (a copy attached). When we developed the chair's duties, the chair was giving one month additional salary and appropriate course release per semester to perform the duties listed. Currently, in the CoE, we have departments and chairs who are on twelve month contract, they are teaching one course per semester and are not serving in any committees. Perhaps, we should add a few more duties to the list of chair's duties approved on March 9 so that the college can justify the chair's 12 month full time positions. The list provided by Dr. Naidu for the Graduate Program Director sound like administrative duties included in the Chair's duties and I believe the college is obligated to abide with the roles and policies set forth by the faculty and the Faculty and Staff Handbook. I also believe that in a college with 22 faculty we must not have 16 administrators! Currently, there are 11 administrators in the CoE and this will add another 5 making it a total of 16 administrators. Does that mean 6 faculty will be working for 16 administrators? In a program with 20-30 undergraduate students and 6 or 7 graduate students, why should we have several administrators? Where is the logic?

Currently, I am quite busy with teaching, research, and service for the college. I am working on two big projects from ITD, I have 4 graduate students (3 active in research) and one undergraduate student involved with research. I am teaching one senior level course, helping the ASCE students with the Steel Bridge, serving on several committees, and I have one graduate student signed up for an independent study in Dynamics of Structures (CE 664) since the college administration canceled a required graduate course last Fall. The student is scheduled to graduate in the Summer of 2008. In addition, I am supporting over 30 students from the NSF scholarship funds that I have to deal with. I am already spending more than 60 hours per week for the above mentioned work. Do I have time for additional responsibilities?

I also strongly encourage the College of Engineering administration to familiarize itself with the Faculty and Staff Handbook in particular the section related to Chair, Faculty, and hiring policies.

Best,  
Habib

M. Zoghi wrote:

Hi Subbaram,

Thank you so very much for the clarification. We sure appreciate it.

Habib - please let us know if you would like to continue as our GPD in light of the following description. Thanks.

Many thanks for your continued support and invaluable contributions.

All the best,

MZ

Manoochehr

In the past, we had such responsibilities assumed by faculty within each program. Now that we have formal depts, and like other depts on the camps, we want to formalize the Graduate Program Director (GPD) position for each MS program. The position is a part of faculty's overall load.

The responsibilities include (but not limited to)

- 1) Review of graduate student applications and recommend to Dept. Chair,
- 2) Advising (not thesis) students for coursework, etc.
- 3) Recruitment and retention of graduate students,
- 4) Curriculum revision etc.
- 5) Any other responsibilities assigned by Dept. Chair

Hope this helps. Let me know if you have any other questions.

Subbaram

M. Zoghi wrote:

Good Morning Dr. Naidu,

I announced in our weekly CEE faculty meeting your request for identifying a Graduate Program Director for our Department; a liaison for you to correspond with concerning graduate program related issues. Apparently, Dr. Sadid has been the designated Grad Program Director in the past. Our faculty would like to know more about the responsibilities of this position and his role in relation to your request.

We will greatly appreciate it if you would please provide additional clarifications.

Many thanks and best regards,

Manoochehr

Ffaculty@mm.coe.edu

<http://coe.isu.edu/cgi-bin/mailman/listinfo/ffaculty>

# EXHIBIT

4

5

1 look at those and make sure that I am correct, but in  
2 your complaint you allege that Idaho State University  
3 breached its contract with you; is that correct?

4 A. Correct.

5 Q. Specifically tell me what terms of the  
6 contract you contend were breached by ISU or any of the  
7 defendants or all of the defendants in your complaint  
8 here.

9 A. I was not evaluated for 2001, 2002, 2003, and  
10 2004; 2005 I was not allowed to respond to the  
11 evaluation. That's it.

12 Q. Any other conduct on the part of the  
13 defendants that you believe was a breach of your  
14 employment contract with ISU?

15 MR. JOHNSON: I object to the form.

16 A. There might be, I don't know.

17 Q. What do you contend?

18 A. Well, there is breach of contract for not  
19 evaluating me for four years as required by the faculty  
20 and staff handbook at ISU, for 2001, 2002, 2003, and  
21 2004. In 2005 Dr. Jay Kunze was forced or asked, I  
22 should say, he was asked by the administration to get  
23 signature to evaluate me. So those files, those  
24 evaluations for 2001, 2002, 2003, 2004 were not in my  
25 file. On April 15, 2005, I asked Dr. Kunze in the

1 presence of Dr. Dante Cantrill, the ombudsman then, to  
2 give my evaluations to me. He did not have.

3 In February or March of 2006 I asked for my  
4 personnel file from Linda Kearn, the administrative  
5 assistant then, for my personnel file. And I made copies  
6 of all of my files, stuff in my file. There was no  
7 evaluations for 2001, 2002, 2003, and 2004.

8 Then Dr. Wharton had asked Dr. Kunze to get  
9 those signatures for those evaluations. I believe Dr.  
10 Kunze falsified those documents. There are  
11 contradictions in there. Also in those documents Dr. Jay  
12 Kunze says these documents were not communicated to Dr.  
13 Sadid because of his political involvement on campus.  
14 And while he admits that they were not served to me, then  
15 in the questions that they asked how did he respond to  
16 the last year's evaluation, he said defensively.

17 So those are -- and indeed he gave me 2002,  
18 2003, and 2004, he forgot to make for 2001. Because in  
19 one of the e-mails I told him that these are three years,  
20 he just made it for those three years.

21 Then in 2004-2005 evaluation Dr. Kunze  
22 evaluated me and left a copy in my mailbox for signature.  
23 I sent him two e-mails asking for a digital copy of my  
24 evaluation for my input. I did not receive that.

25 Then apparently Dr. Kunze had told Dr. Wharton



1 Q. So the one in between Exhibit No. 6 and --

2 A. This (indicating) is for 2000. This is after  
3 this, this was the last one I was completely evaluated.

4 Q. Let me state the question. I think I  
5 understand what you are telling me. Between Exhibit 2006  
6 and the evaluation for the calendar year 2002, you did  
7 not received an evaluation. That one you still had never  
8 received; is that what I understand?

9 A. Exhibit 2006, is that what you said?

10 Q. No, the numbering is getting you confused or  
11 maybe I stated it wrong.

12 A. You did say 2006.

13 Q. Let me try again. Let's start all over again.  
14 Between Exhibit No. 6 and calendar year 2002 you then did  
15 not receive an evaluation.

16 A. No.

17 Q. And thereafter you did receive an evaluation  
18 for 2002, calendar year 2002, calendar year 2003,  
19 calendar year 2004, and 2005?

20 A. No, I received for 2002, 2003, and 2004 with a  
21 memo in 2005. Then for 2005 he did evaluate me on time;  
22 he didn't allow me that five days for my response.

23 Q. So if I understand, then, really what the  
24 problem is, is that you didn't have an evaluation for the  
25 calendar year 2001.

1 A. Yes.

2 Q. You don't like the comment in the evaluation  
3 for calendar year 2000.

4 A. Correct.

5 Q. You believe that that damaged you and began  
6 the damage to your career; correct?

7 A. Correct.

8 Q. And then you didn't get 2002, 2003, and 2004  
9 in what you believed to be a timely fashion; correct?

10 A. Correct.

11 Q. What is a timely fashion for receiving these,  
12 when are you supposed to receive them?

13 A. We supposed to receive them sometime in  
14 February or March and you have to give back by five days,  
15 then it goes to upper administration and they have  
16 deadlines set for when the evaluations should be in.

17 Q. And that's what you were explaining to me  
18 earlier about the ten days, then, or the five days,  
19 excuse me.

20 A. The five days, correct.

21 Q. Anything else that you claim is problematic  
22 with the evaluation?

23 A. Evaluations?

24 Q. Correct. Let me restate it. Anything else  
25 you believe in these evaluations or in the process of

1 evaluating you that is a breach of the contract with you?

2 A. After 2000 there was nothing except that one  
3 sentence in Item 19, two sentences, three sentences. Of  
4 course for 2001 there is none. For 2002, 2003, 2004, and  
5 when he did in 2005 there are statements such as this  
6 evaluation was not communicated to Dr. Sadid because of  
7 his political involvement on campus.

8 Then in there, if you compare my evaluations  
9 up to 2000, every question, and compare the ones in those  
10 evaluations for 2002, 2003, 2004, none of my -- I mean if  
11 you compare these, totally different. I mean he is  
12 totally -- I mean if you read them, he is mad, he wanted  
13 injure me. He is absolutely not -- I mean it's a very,  
14 in my opinion, funny way of evaluating somebody's job  
15 performance as you can read from 2002, 2003, 2004.

16 Then I was distinguished teacher of the year  
17 for the university. It was never mentioned in my 2003  
18 evaluation that I was distinguished teacher of the year  
19 in the university for 2002. It was not even mentioned in  
20 my 2003 evaluation --

21 Q. You didn't mention it in your self-evaluation?

22 A. In my self-evaluation, I don't recall if I did  
23 or not, I don't recall. I have to go through it so --

24 Q. So you may have even forgotten it?

25 A. I may have forgotten. I may have even

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FILED  
BANNOCK COUNTY  
CLERK OF THE COURT

2010 JAN 15 PM 12:05

BY   
DEPUTY CLERK

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT FOR THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

HABIB SADID, an individual,

Plaintiff,

v.

IDAHO STATE UNIVERSITY, ROBERT  
WHARTON, JAY KUNZE, MICHAEL  
JAY LINEBERRY, MANOOCHHEHR  
ZOGHI, RICHARD JACOBSEN, GARY  
OLSON, AUTIUR VAILAS and  
JOHN/JANE DOES I through X, whose  
true identities are presently unknown,

Defendants.

Case No. CV 2008-39420C

**PLAINTIFF'S REPLY  
MEMORANDUM IN SUPPORT OF  
MOTION FOR RECONSIDERATION**

**INTRODUCTION**

On December 24, 2009, Plaintiff Habib Sadid (hereinafter "Professor Sadid") filed his motion asking this Court to reconsider certain aspects of its order granting summary judgment to Defendants. Pursuant to Rule 7(b)(3)(C) of the Idaho Rules of

**PLAINTIFF'S REPLY MEMORANDUM IN SUPPORT  
OF MOTION FOR RECONSIDERATION - 1**

Civil Procedure, Professor Sadid lodged his supporting memorandum on January 5, 2010. Thereafter, on January 12, 2010, Defendants lodged their memorandum opposing Professor Sadid's motion for reconsideration. Professor Sadid now takes this opportunity to Reply pursuant to Rule 7(b)(3)(E) of the Idaho Rules of Civil Procedure. This brief only addresses the issue of protected speech, since the other issues have reached the point of saturation.

### REPLY

Professor Sadid contends he engaged in protected speech under any formulaic test adopted by our United States Supreme Court, but nonetheless believes the proper test ought to be applied to the facts of his case. And, according to *Garcetti v. Ceballos*, 547 U.S. 410 (2006), itself, *Garcetti* does not extend to speech related to "scholarship or teaching". *Garcetti*, 547 U.S. at 425. It does not appear that the United States Supreme Court has yet decided, as of this date, whether to extend *Garcetti* to speech related to scholarship or teaching. Thus, it stands to reason that the previous analytical framework used in speech concerning scholarship or teaching controls until such time as the United States Supreme Court decides whether or not to extend *Garcetti* to the academic setting.

Accordingly, Professor Sadid continues to urge this Court to apply the *Pickering-Connick*<sup>1</sup> balancing test used by the Idaho Supreme Court in *Karr v. Bermeasolo*, 142 Idaho 444 (2005). Under this applicable framework, the Court does not have to find whether Professor Sadid spoke as a "private citizen" or "public employee." The inquiry of course remains one of law, not fact. *Lubcke v. Boise City/Ada County Hous. Auth.*, 124 Idaho 450, 466, 860 P.2d 653, 668 (1993) (quoting *Connick v. Myers*, 461 U.S. 138, 148 n.7, 75 L. Ed. 2d 708, 103 S. Ct. 1684 (1983)).

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<sup>1</sup> *Pickering v. Board of Educ.*, 391 U.S. 563 (1968); *Connick v. Myers*, 461 U.S. 138 (1983).

However, when the proper test is applied to the expressions of Professor Sadid there can be no question as to their protected status. Take for example the article published in the Sunday, November 16, 2008, edition of the Idaho State Journal, titled: Are President Vailas' policies damaging ISU? No doubt this article relates to scholarship or teaching. It was authored by a tenured, faculty member of Idaho State University; the article discusses the research policies adopted by the administration of an institution of higher learning in the state of Idaho. See Idaho Code § 33-3001. Whether or not Idaho State University looks to become the "MIT of the West" by focusing on research or maintains its traditional focus on instruction is beyond any doubt a matter of concern to the public. To characterize the entire article and the other articles of record for that matter as nothing more than personal grievances against ISU is patently ridiculous. Professor Sadid's interest in speaking on such a topic is of utmost importance and of great value to the local community and to the academic and non-academic communities at large. Not long after publishing this article on November 16, 2008, and filing suit on September 29, 2008, Professor Sadid was subjected to a barrage of disciplinary action taken against him by President Vailas, Provost Olson and Dean Jacobsen. See *Amended Complaint*, ¶¶ 22-24.

It is of worth to note for purposes of clarification that Professor Sadid maintains his position that he spoke as a private citizen rather than a public employee. It obviously was not a part of his official duties to criticize the ISU administration in the local newspaper. On this point, we respectfully take issue with this Court's opinion that, "Whether his job description requires him to write articles is not the determining factor of him being in the role of a citizen or a public employee." See *Decision on Motion for*

*Summary Judgment*, p. 12 of 25. In *Garcetti v. Ceballos*, 547 U.S. 410 (2006), the United States Supreme Court stated:

The controlling factor in Ceballos's case is that his expressions were made pursuant to his duties as a calendar deputy. *See Brief for Respondent 4* ("Ceballos does not dispute that he prepared the memorandum 'pursuant to his duties as a prosecutor'"). That consideration – the fact that Ceballos spoke as a prosecutor fulfilling a responsibility to advise his supervisor about how best to proceed with a pending case – distinguishes Ceballos' case from those in which the First Amendment provides protection against discipline. We hold that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.

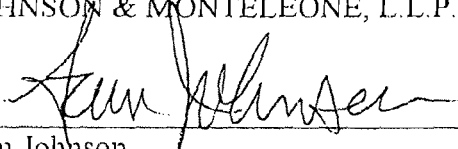
*Garcetti*, 547 U.S. at 421. Thus, whether the statements in question were made pursuant to official duties does guide the inquiry on whether a person has spoken privately or as a public employee. The fact Professor Sadid may have been identified in the newspaper as a member of the ISU faculty does not mean he spoke pursuant to official duties. As stated above, it thus does not matter whether we rely on *Garcetti* or not, the result is the same, and Professor Sadid's speech is protected.

### CONCLUSION

The record does not support the summary dismissal of Professor Sadid's claim of retaliation for speaking on matters of vital importance to the public.

DATED: This 15 day of January, 2010.

JOHNSON & MONTELEONE, L.L.P.


  
Sam Johnson  
Attorneys for Plaintiff

**CERTIFICATE OF MAILING, DELIVERY, OR FACSIMILE TRANSMISSION**

I CERTIFY that on January 15, 2010, I caused a true and correct copy of the foregoing document to be:

<input type="checkbox"/> mailed <input type="checkbox"/> hand delivered <input type="checkbox"/> CM/ECF Electronic Filing <input checked="" type="checkbox"/> transmitted fax machine to: (208) 232-6109	John A. Bailey, Jr. Racine Olson Nye Budge & Bailey, Chtd. 201 E. Center P. O. Box 1391 Pocatello, ID 83204-1391
--	--

JOHNSON & MONTELEONE, L.L.P.

  
Sam Johnson  
Attorney for Plaintiff



2010 JUN 25 PM 4:48

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND  
FOR THE STATE OF IDAHO, COUNTY OF BANNOCK

HABIB SADID,

Plaintiff,

vs.

IDAHO STATE UNIVERSITY, ROBERT  
WHARTON, JAY KUNZE, MICHAEL  
JAY LINDEBERRY, MANOOCHHEHR  
ZOGHI, RICHARD JACOBSEN, GARY  
OLSON, AUTHUR VAILAS and  
JOHN/JANES DOES 1 through X, whose  
true identities are presently unknown,

Defendants.

Case No:CV-2008-0003942-OC

**MINUTE ENTRY & ORDER**

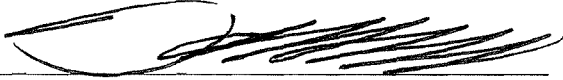
THE PARTIES came before the Court on the 19<sup>th</sup> day of January, 2010 for a hearing on Plaintiff's Motion to Reconsider and Defendants' Motion for Fees and Costs. Sam Johnson appeared in person on behalf of the Plaintiff. John Bailey appeared in person on behalf of the Defendants. The parties waived a presence of a Court Reporter.

At the outset, the Court heard oral argument on the Plaintiff's Motion to Reconsider.

Thereafter, the Court took the matter under advisement and will issue a decision within 30 days. The Court will also take Defendant's Motion for Fees and Costs under advisement and will issue a decision addressing both motions within 30 days.

Case No.: CV-2008-0003942-OC  
MINUTE ENTRY & ORDER  
Page 1 of 2

DATED this 25<sup>th</sup> day of January, 2010.

  
\_\_\_\_\_  
DAVID C. NYE  
District Judge

**CERTIFICATE OF SERVICE**

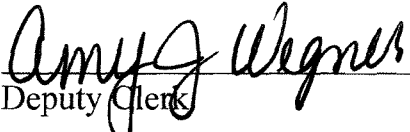
I HEREBY CERTIFY that on the 25<sup>th</sup> day of January, 2010, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Sam Johnson  
Johnson & Monteleone, LLP  
405 S. Eighth Street, Suite 250  
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\_\_\_\_\_  
Deputy Clerk

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

2010 FEB 24 PM 3:31

HABIB SADID, an individual,

Plaintiff,

v.

Case No. CV-2008-3942-OC

IDAHO STATE UNIVERSITY,  
ROBERT WHARTON, JAY KUNZE,  
MICHAEL JAY LINEBERRY,  
MANOOCHHEHR ZOGHI, RICHARD  
JACOBSEN, GARY OLSON,  
AUTHUR VAILAS and JOHN/JANE  
DOES I through X, whose true  
identities are presently unknown,

Defendants.

DECISION ON MOTION FOR  
RECONSIDERATION

This matter came before this Court for hearing on Plaintiff's Motion for Reconsideration on January 19, 2010. The Plaintiff was represented by Sam Johnson. The Defendants were represented by John Bailey. The Plaintiff's Motion was filed in response to the Court's Decision on Motion for Summary Judgment dated December 18, 2009. The Court reviewed the documents submitted by the parties, heard oral argument from counsel, reviewed its Decision on Summary Judgment and due to the complexity of the case, the Court took the matter under advisement. Now, the Court issues its decision **denying** the Plaintiff's Motion for Reconsideration.

CV-2008-3942-OC

DECISION ON MOTION FOR RECONSIDERATION

Page 1 of 8

## DISCUSSION

1. Whether the Court Applied the Proper Test. The Plaintiff asks the Court to apply *Karr v. Bermeosolo*, 142 Idaho 444, 129 P.3d 88 (2005) rather than *Garcetti v. Ceballos*, 547 U.S. 410, 425(2006) when analyzing protected speech. Plaintiff asserts that the Idaho Supreme Court in *Karr* uses the *Pickering* balancing test, which better applies to academic settings. See, Plaintiff's Memorandum On Motion for Reconsideration, p. 4. It should be noted that *Karr* did not involve an academic setting in that Maureen Karr was employed by the Idaho State Veterans Home as a registered nurse manager. Karr wrote a letter to the Governor of Idaho asking him to address issues at the Veterans Home. She was disciplined for writing the letter. Ultimately, Kerr was terminated from employment. She filed suit alleging that she was wrongfully terminated. The District Court granted all defendants summary judgment on the basis that the letter was not protected speech under the First Amendment and there was no evidence linking the termination to the letter. The Supreme Court affirmed the summary judgment.

In light of Plaintiff's request, the Court has reviewed *Karr*, in which the Idaho Supreme Court stated the four part test for determining whether speech is constitutionally protected as follows:

First, the court must determine whether the speech may be fairly characterized as constituting speech on a matter of public concern. If the speech involves a matter of public concern, then the court must balance the employee's interest in commenting upon matters of public concern against the interest of the state, as an employer, in promoting the efficiency of the public services it performs. Third, if

CV-2008-3942-OC

DECISION ON MOTION FOR RECONSIDERATION

Page 2 of 8

the balance favors the employee, then the employee must show that the protected speech was a substantial or motivating factor in the detrimental employment decision. Finally, if the employee meets this burden, then the employer is required to show by a preponderance of the evidence that it would have reached the same decision even in the absence of protected speech.

*Fridenstine v. Idaho Dept. of Admin.*, 133 Idaho 188, 194, 983 P.2d 842, 848 (1999) (quoting *Lockhart v. State, Dept. of Fish & Game*, 127 Idaho 546, 552, 903 P.2d 135, 141 (Ct.App.1995)). “[T]he inquiry into the protective status of the speech is one of law, not fact.” *Lubcke v. Boise City/Ada County Hous. Auth.*, 124 Idaho 450, 466, 860 P.2d 653, 668 (1993) (quoting *Connick v. Myers*, 461 U.S. 138, 148 n. 7, 103 S.Ct. 1684, 1691, 75 L.Ed.2d 708, 720 (1983)); see also *Farnworth v. Femling*, 125 Idaho 283, 286, 869 P.2d 1378, 1382 (1994). The Court makes an independent judgment of whether the statement is of public concern taking into consideration the manner, time and place in which it was made. *Lockhart*, 127 Idaho at 552, 903 P.2d at 141 (citing *Connick*, 461 U.S. at 152, 103 S.Ct. at 1692-93, 75 L.Ed.2d at 723).

“Whether an employee's speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record.” *Connick*, 461 U.S. at 147-48, 103 S.Ct. at 1690-91, 75 L.Ed.2d at 720-21. This determination turns on the nature of the employee's speech-whether it concerns matters involving political, social or other concerns to the community. *Gardner v. Evans*, 110 Idaho 925, 933, 719 P.2d 1185, 1193 (1986) (citing *Connick*, 461 U.S. at 146, 103 S.Ct. at 1689-90, 75 L.Ed.2d at 719-20). A public employee still enjoys First Amendment protection even if his or her views are expressed privately. *Givhan v. W. Line Consol. Sch. Dist.*, 439 U.S. 410, 415-16, 99 S.Ct. 693, 696, 58 L.Ed.2d 619, 624-25 (1979). **However, speech focused on internal policy and personnel grievances does not implicate the First Amendment.** *Hyland v. Wonder*, 972 F.2d 1129, 1137 (9th Cir.1992). (emphasis added)

*Karr v. Bermeosolo*, 142 Idaho 444 (2005).

This Court is not convinced that the *Karr* test is the correct test to apply.

*Karr* was decided by the Idaho Supreme Court on October 5, 2005. *Garcetti* was CV-2008-3942-OC  
DECISION ON MOTION FOR RECONSIDERATION  
Page 3 of 8

decided by the U.S. Supreme Court in 2006. Although there is some discussion in *Garcetti* that “expression related to academic scholarship or classroom instruction” may be outside the *Garcetti* test, the Supreme Court expressly did not carve out an academia exception.<sup>1</sup> This Court will not carve out such an exception, but will leave it to the appellate courts to address. *Garcetti* is more recent than *Karr* and this Court believes it is the test to be applied.

Alternatively, even though the Plaintiff asserts *Karr* is the correct test to use regarding academics and protected speech, the results are the same. The Court still must determine whether the speech at issue may be characterized as public speech. The Court delved into this discussion in its Decision on Motion for Summary Judgment. The result in the Court’s Decision was that there was no matter of public concern because the statements Sadid made went to matters involving internal administrative disputes and relayed personal grievances. As such, Sadid does not pass the first prong of the *Karr* test and therefore no more analysis needs to be done under this test.

Furthermore, the Court agrees with the Plaintiff in that “[t]he guarantees of the First Amendment ‘share a common purpose of assuring freedom of communication on matters relating to the functioning of government.’” *McKinley v. City of Eloy*, 705 F.2d 1110, 1114 (9<sup>th</sup> Cir. 1983) (quoting *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575, 65 L. Ed. 2d 973, 100 S.Ct. 2814

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<sup>1</sup> Additionally, this Court perceives a distinction between speech in the classroom setting and speech in a newspaper. Even if there is an academia exception, this Court would not apply it to the facts of this case.

(1980)) (Plaintiff's Memo In Supp. Of Motion for Reconsideration, pp. 5-6). However, the very case that Sadid asks this Court to review clearly states that "speech focused on internal policy and personnel grievances does not implicate the First Amendment." *Karr* (citing *Hyland*). This rule, when applied to the findings from the Court's earlier decision, again results in the Court holding that the Plaintiff's argument of protected speech does not rise to the level of implicating the First Amendment protections because it was personal and not public.

2. Multiple letters. Plaintiff argues that the Court focused on only two letters he wrote to the newspaper when the Court held that Plaintiff's speech was not protected speech. While the Court only referenced two letters in the recitation of facts, the Court's holding was that all of the challenged speech was made by a public employee rather than a private citizen. Additionally, it is the Court's holding that none of the challenged speech was "a matter of public concern." Instead, the Court determined that all of the speech dealt with "individual personal disputes and grievances." The Court's intent was to apply this holding to all of Professor Sadid's expressions of record.

3. Breach of Contract: Plaintiff's Argument of Failure to Complete Evaluations. Plaintiff asked the Court to reconsider the contract claim as he asserts that the Court committed error in reaching its conclusion that annual evaluations of a tenured professor are not required. Sadid's argument relies on

the “section of the Handbook favorable to Plaintiff which on its face compels the annual evaluation of ‘each faculty member in that department...’” *See*, Plaintiff’s Memorandum in Support of Motion for Reconsideration, p. 7. Sadid asserts that the annual evaluations cited in the handbook in section (B)(1) are a separate responsibility to the periodic tenure evaluations that should be done every five years cited in (B)(7).<sup>2</sup> After reconsidering and reviewing the file and arguments, the Court again finds that the language of the handbook is clear and unambiguous and therefore it again applies (B)(7) as the relevant provision for the evaluation requirements of a tenured faculty.

Furthermore, Plaintiff contends that he has not received a performance evaluation since 1999, and therefore when following the five year rule of (B)(7) the next evaluation is due in 2004. Plaintiff asserts that the evaluations during that time were not completed.<sup>3</sup> However, in Exhibit A, attached to Defendant’s Memorandum in Opposition of Reconsideration, the copies of the evaluations show that evaluations were done for 2000 (signed by Sadid), 2003 (evaluation completed but not delivered to Sadid due to a “contentious situation”), 2005 (copy of evaluation sent to Sadid), 2006 (signed by Sadid) and 2007 (signed by Sadid).

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<sup>2</sup> Both of the handbook citations are found in the FACULTY /STAFF HANDBOOK under Part 4, Section IV.

<sup>3</sup> In its Decision on Motion for Summary Judgment, the Court found that the Statute of Limitations bars any alleged breach occurring more than five years prior to the filing of the Complaint. The Court reaffirms this finding and therefore considers only those alleged breaches that took place after 2003. In Defendant’s Exhibit A, attached to the Defendant’s memorandum in Opposition of Reconsideration, copies of the evaluations for January 2006 – December 2006 and January 2007 – December 2007 are both signed and dated by the Plaintiff. This shows that evaluations were completed within a 5 year span from 2003 to 2008, and ultimately eliminates the breach of contract claim by the Plaintiff.



Therefore, the Court finds that the Plaintiff's contentions are misleading as evaluations were completed at least within five years of each other. The Court, therefore, reiterates that there was no breach of contract by the Defendant and its decision is affirmed.

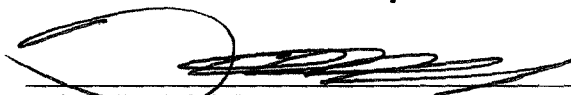
4. Redress of Grievances. The Decision on the Motion for Summary Judgment issued by this Court was "against the Amended Complaint and against all defendants." Decision, p. 4. The Court recognizes that Plaintiff filed this action on September 29, 2008 and that he petitioned for redress of his grievances. The Court also recognizes the Plaintiff alleges that the Defendants have continued to retaliate against him after the filing of this claim. That is one of the reasons he filed a Motion to Amend Complaint on August 27, 2009. The Decision on Summary Judgment deals only with those allegations of retaliation that come before August 27, 2009.

### CONCLUSION

The Court has reconsidered the issues raised by Plaintiff. Based upon the above discussion, the Court stands by its prior decision. Therefore, the Plaintiff's Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

DATED: February 24, 2010.

  
DAVID C. NYE  
District Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the <sup>25<sup>th</sup></sup> day of February, 2010, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

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Johnson & Monteleone, LLP  
405 S. Eighth Street, Suite 250  
Boise, Idaho 83702

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Deputy Clerk

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Attorney for Appellant

FILED  
BANNOCK COUNTY  
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2010 MAR 31 AM 11:15  
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF BANNOCK**

HABIB SADID, an individual,	)	
	)	CASE NO. CV-2008-3942-OC
	)	
Plaintiff/Appellant,	)	
	)	<b>NOTICE OF APPEAL</b>
vs.	)	
	)	
IDAHO STATE UNIVERSITY,	)	
ROBERT WHARTON, JACK	)	
KUNZE, MICHAEL JAY	)	
LINEBERRY, MANOOCHER	)	
ZOGHI, RICHARD JACOBSEN,	)	
GARY OLSON, AUTHUR VAILAS	)	
and JOHN/JANE DOES I through	)	
X, whose true identities are presently	)	
unknown,	)	
Defendants/Respondents.	)	
	)	

TO: THE ABOVE-NAMED RESPONDENTS, STATE OF IDAHO, AND  
ITS ATTORNEY, JOHN A. BAILEY, Racine, Olson, Nye, Budge &  
Bailey, Chtd., P. O. Box 1391, Pocatello, Idaho, 83204, email:  
jab@racinelaw.net:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, HABIB SADID, by and through his attorney of record, JOHN C. LYNN, appeals against the above-named Respondents to the Idaho Supreme Court from the DECISION ON MOTION FOR RECONSIDERATION, entered in the above-entitled action on February 24, 2010, and the DECISION ON MOTION FOR SUMMARY JUDGMENT, entered in the above-entitled action on December 18, 2009, Honorable David C. Nye presiding.

2. The Appellant has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1), I.A.R.

3. Preliminary statement of issues on appeal:

Did the trial court improperly dismiss Appellant's claims of (1) Deprivation of Constitutional Rights and (2) Breach of Contract?

4. No order remains in effect sealing any portion of the record.

5. (a) Is a reporter's transcript requested? Yes.

(b) The Appellant requests the preparation of the following portions of the reporter's transcript in hard copy:

(i) The hearing upon Respondent's MOTION FOR SUMMARY JUDGMENT, held on November 2, 2010;

(ii) The hearing upon Appellant's MOTION FOR RECONSIDERATION, held on January 19, 2010.

6. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

(a) Appellant's and Respondents' Affidavits and Briefing filed upon Respondents' MOTION FOR SUMMARY JUDGMENT, together with all exhibits submitted therewith;

(b) Appellant's and Respondents' Affidavits and Briefing filed upon Appellant's MOTION FOR RECONSIDERATION, together with all exhibits submitted therewith.

7. The Appellant requests the following documents admitted as exhibits to be copied and sent to the Supreme Court:

(a) All exhibits attached to Plaintiff's COMPLAINT and FIRST AMENDED COMPLAINT;

(b) All exhibits attached to the Affidavits and Briefing referenced in paragraph 6(a) and 6(b) above.

8. I hereby certify:

(a) That a copy of this notice of appeal has been served on the court reporter.

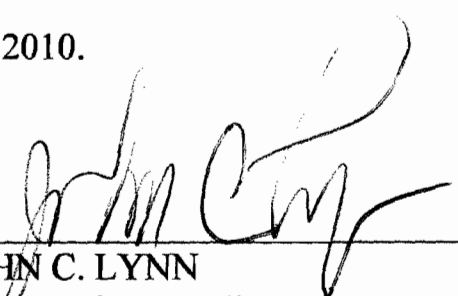
(b) That the Clerk of the District Court has been paid the estimated fee for preparation of the reporter's transcript.

(c) That the estimated fee for the preparation of the Clerk's record has been paid.

(d) That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20 and the Attorney General.

DATED This 29 day of March, 2010.



---

JOHN C. LYNN  
Attorney for Appellant

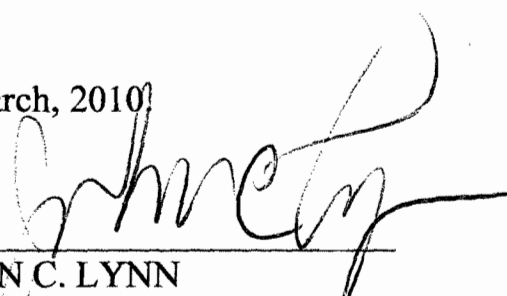
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That on this 29 day of March, 2010, I served  
a true and correct copy of the foregoing document, by depositing the same in  
the US Mail, postage prepaid, to the following:

John A. Bailey  
Racine, Olson, Nye, Budge & Bailey, Chtd.  
P. O. Box 1391  
Pocatello, ID 83204

Office of the Attorney General  
State of Idaho  
700 W. State St.  
P. O. Box 83720  
Boise, ID 83720-0010

DATED This 29 day of March, 2010

  
\_\_\_\_\_  
JOHN C. LYNN  
Attorney for Appellant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

HABIB SADID, an individual,	)	
	)	
Plaintiff/Appellant,	)	Supreme Court No.
	)	
v.	)	
	)	CLERK'S CERTIFICATE
IDAHO STATE UNIVERSITY,	)	
ROBERT WHARTON, JACK	)	OF
KUNZE, MICHAEL JAY	)	APPEAL
LINEBERRY, MANOOCHER	)	
AOGHI, RICHARD JACOBSEN, GARY	)	
OLSON, AUTHUR VAILAS and	)	
JOHN/JANE DOES I through X, whose	)	
True identities are presently unknown,	)	
	)	
Defendants/Respondents,	)	
	)	
	)	

Appealed from: Sixth Judicial District, Bannock County

Honorable David C. Nye, presiding

Bannock County Case No: CV-2008-3942-OC

Order of Judgment Appealed from: Decision on Motion for Summary Judgment  
filed the 18<sup>th</sup> day of December, 2009 and Decision on Motion for Reconsideration  
filed the 24<sup>th</sup> day of February, 2009.

Attorney for Appellant: Sam Johnson, JOHNSON & MONTELEONE, LLP, Boise  
and John C. Lynn, Attorney at Law, Boise

Attorney for Respondent: John A. Bailey, Racine, Olson, Nye, Budge & Bailey,  
Chtd. Pocatello



Appealed by: Habib Sadid

Appealed against: Idaho State University, Robert Wharton, Jack Kunze, Michael Jay Lineberry, Manoochenr Aoghi, Richard Jacobsen, Gary Olson, Authur Vailas and John/Jane Does I through X, whose True indentities are presently unknown.

Notice of Appeal filed: 3-31-10

Notice of Cross-Appeal filed: No

Appellate fee paid: Yes

Request for additional records filed: No

Request for additional reporter's transcript filed: Yes

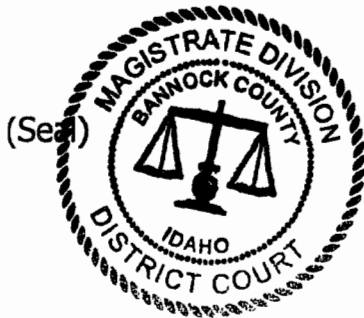
Name of Reporter: Stephanie Davis

Was District Court Reporter's transcript requested? Yes

Estimated Number of Pages: More than 100 for Motion for Summary Judgment held 11-2-10 and Motion for Reconsideration held on 1-19-10.

Dated April 2, 2010

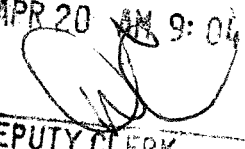
DALE HATCH,  
Clerk of the District Court



By [Signature]  
Deputy Clerk

John A. Bailey, Jr. (ISB No. 2619)  
RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED  
P.O. Box 1391  
Pocatello, Idaho 83204-1391  
Telephone: (208) 232-6101  
Fax: (208) 232-6109

*Attorney for Defendants*

FILED  
BANNOCK COUNTY  
CLERK OF THE COURT  
2010 APR 20 AM 9:04  
BY   
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF BANNOCK

HABIB SADID, an individual, )  
)  
Plaintiff, )  
)  
vs. )  
)  
IDAHO STATE UNIVERSITY, ROBERT )  
WHARTON, JAY KUNZE, MICHAEL )  
JAY LINEBERRY, MANOOCHHEHR )  
ZOGHI, RICHARD JACOBSEN, GARY )  
OLSON, AUTHUR VAILAS and )  
JOHN/JANE DOES I through X, whose )  
true identities are presently unknown, )  
)  
Defendants. )  
\_\_\_\_\_ )

Case No. CV 2008-3942-OC

**NOTICE OF CROSS APPEAL**

TO: THE ABOVE NAMED APPELLANT AND THEIR ATTORNEY OF RECORD, AND THE  
CLERK OF THE ABOVE-ENTITLED COURT, NOTICE IS HEREBY GIVEN that:

1. The above named Respondent/Cross Appellant hereby cross-appeals against the  
above named Appellant to the Idaho Supreme Court from the Orders entered in the above entitled  
action on January 19, 2010, the Honorable David Nye presiding.
2. The Respondent/ Cross-Appellant has a right of appeal to the Idaho Supreme

**NOTICE OF CROSS-APPEAL - 1**

Court, and the Order described in Paragraph 1 above is an appealable Order under and pursuant to I.A.R. 11(a)(1) and (7). The Respondent/Cross Appellant has the right to cross-appeal pursuant to I.A.R. 15.

3. The preliminary issue intended to be asserted on cross-appeal is whether the District Court erred in denying Respondent/Cross-Appellant's motion for attorney fees.

4. No Order has been entered sealing all or any portion of the record.

5. A reporter's standard transcript of all hearings in this matter at the District Court level is requested.

6. The Appellant requests the following documents be included in the clerk's record, in addition to those automatically included under I.A.R. 28:

- a) every written document filed or logged with the District Court including, but not limited to, motions, briefs, memorandum, statements, pleadings and amended pleadings, affidavits, and memorandum or decisions of the Court.

7. I certify that:

- (a) A copy of this Notice of Cross-Appeal has been served on the reporter;
- (b) The reporter of the District Court has been paid the estimated fee for preparation of the transcript(s);
- (c) That the estimated fee for the preparation of the clerk's record has been paid;
- (d) That the Appellant filing fee has been paid;
- (e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 19 day of April, 2010.

RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED

By: John A. Bailey  
JOHN A. BAILEY, JR.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 21 day of April, 2010, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Sam Johnson  
JOHNSON & MONTELEONE, L.L.P.  
405 South Eighth Street, Suite 250  
Boise, Idaho 83702

[ ] U. S. Mail  
Postage Prepaid  
[ ] Hand Delivery  
[ ] Overnight Mail  
[ ☒ ] Facsimile (208) 947-2424

John C. Lynn  
ATTORNEY AT LAW  
776 E. Riverside Drive, Suite 200  
Eagle, Idaho 83616

[ ] U. S. Mail  
Postage Prepaid  
[ ] Hand Delivery  
[ ] Overnight Mail  
[ ☒ ] Facsimile (208) 685-2355

John A. Bailey  
JOHN A. BAILEY, JR.

DATED this 19 day of April, 2010.

RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED

By: John A. Bailey  
JOHN A. BAILEY, JR.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 19 day of April, 2010, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Sam Johnson  
JOHNSON & MONTELEONE, L.L.P.  
405 South Eighth Street, Suite 250  
Boise, Idaho 83702

[ ] U. S. Mail  
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John C. Lynn  
ATTORNEY AT LAW  
776 E. Riverside Drive, Suite 200  
Eagle, Idaho 83616

[ ] U. S. Mail  
Postage Prepaid  
[ ] Hand Delivery  
[ ] Overnight Mail  
[ ☒ ] Facsimile (208) 685-2355

Stephane Morse  
Court Reporter for Judge Nye  
P.O. Box 4165  
Pocatello, Idaho 83205

[ ] U. S. Mail  
Postage Prepaid  
[ ] Hand Delivery  
[ ] Overnight Mail  
[ ☒ ] Facsimile

John A. Bailey  
JOHN A. BAILEY, JR.

**NOTICE OF CROSS-APPEAL - 3**

John A. Bailey, Jr. (ISB No. 2619)  
RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED  
P.O. Box 1391  
Pocatello, Idaho 83204-1391  
Telephone: (208) 232-6101  
Fax: (208) 232-6109

FILED  
BANNOCK COUNTY  
CLERK OF THE COURT  
2010 APR 20 PM 4:17  
BY *[Signature]*  
DEPUTY CLERK

*Attorney for Defendants*

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF BANNOCK

HABIB SADID, an individual, )  
)  
Plaintiff, )  
)  
vs. )  
)  
IDAHO STATE UNIVERSITY, ROBERT )  
WHARTON, JAY KUNZE, MICHAEL )  
JAY LINEBERRY, MANOOCHHEHR )  
ZOGHI, RICHARD JACOBSEN, GARY )  
OLSON, AUTHUR VAILAS and )  
JOHN/JANE DOES I through X, whose )  
true identities are presently unknown, )  
)  
Defendants. )  
\_\_\_\_\_ )

Case No. CV 2008-3942-OC

**NOTICE OF AMENDED CROSS  
APPEAL**

TO: THE ABOVE NAMED APPELLANT AND THEIR ATTORNEY OF RECORD, AND THE  
CLERK OF THE ABOVE-ENTITLED COURT, NOTICE IS HEREBY GIVEN that:

1. The above named Respondent/Cross Appellant hereby cross-appeals against the  
above named Appellant to the Idaho Supreme Court from the Orders entered in the above entitled  
action on January 19, 2010, the Honorable David Nye presiding.
2. The Respondent/ Cross-Appellant has a right of appeal to the Idaho Supreme

**NOTICE OF AMENDED CROSS-APPEAL - 1**

Court, and the Order described in Paragraph 1 above is an appealable Order under and pursuant to I.A.R. 11(a)(1) and (7). The Respondent/Cross Appellant has the right to cross-appeal pursuant to I.A.R. 15.

3. The preliminary issue intended to be asserted on cross-appeal is whether the District Court erred in denying Respondent/Cross-Appellant's motion for attorney fees.

4. No Order has been entered sealing all or any portion of the record.

5. A reporter's standard transcript of all hearings in this matter at the District Court level is requested.

6. The Appellant requests the following documents be included in the clerk's record, in addition to those automatically included under I.A.R. 28:

- a) Answer and Demand for Jury Trial dated February 11, 2009;
- b) Motion to Amend Complaint dated August 27, 2009;
- c) Motion for Summary Judgment Pursuant to I.R.C.P. 56 (c) dated September 11, 2009;
- d) Memorandum in Support of Motion for Summary Judgment Pursuant to I.R.C.P. 56 (c) dated September 11, 2009;
- e) Affidavit of John Bailey, Jr. In Support of Motion for Summary Judgment dated September 11, 2009 with attached exhibits;
- f) Memorandum in Opposition to Plaintiff's Motion to Amend Complaint dated September 28, 2009;
- g) Minute Entry and Order dated October 26, 2009;
- h) Reply Memorandum Re: Defendants' Motion for Summary Judgment dated

October 30, 2009;

- i) Reply Affidavit of John A. Bailey, Jr. Re: Defendants' Motion for Summary Judgment dated October 30, 2009 with attached exhibits;
- j) Motion to Strike Affidavit of Habib Sadid dated October 30, 2009;
- k) Memorandum in Support of Motion to Strike Affidavit of Habib Sadid dated October 30, 2009;
- l) Decision on Motion for Summary Judgment dated December 18, 2009;
- m) Judgment dated December 22, 2009;
- n) Defendants' Motion for Attorney Fees and Costs dated December 30, 2009;
- o) Affidavit of John A. Bailey, Jr. In Support of Defendants' Motion for Fees and Costs dated December 30, 2009 along with all attached exhibits;
- p) Defendants' Memorandum in Support of Motion for Attorney Fees and Costs dated December 30, 2009;
- q) Defendants' Memorandum in Opposition to Plaintiff's Motion for Reconsideration Re: Decision on Motion for Summary Judgment dated January 12, 2010;
- r) Affidavit of John A. Bailey, Jr. In Opposition to Plaintiff's Motion for Reconsideration dated January 12, 2010 with attached exhibits;
- s) Decision on Motion for Reconsideration dated February 24, 2010;

7. I certify that:

- (a) A copy of this Notice of Cross-Appeal has been served on the reporter;
- (b) The reporter of the District Court has been paid the estimated fee for



preparation of the transcript(s);

- (c) That the estimated fee for the preparation of the clerk's record has been paid;
- (d) That the Appellant filing fee has been paid;
- (e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 20 day of April, 2010.

RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED

By: John A. Bailey  
JOHN A. BAILEY, JR.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 20 day of April, 2010, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Sam Johnson  
JOHNSON & MONTELEONE, L.L.P.  
405 South Eighth Street, Suite 250  
Boise, Idaho 83702

[ ☒ ] U. S. Mail  
Postage Prepaid  
[ ☐ ] Hand Delivery  
[ ☐ ] Overnight Mail  
[ ☒ ] Facsimile (208) 947-2424


John C. Lynn  
ATTORNEY AT LAW  
776 E. Riverside Drive, Suite 200  
Eagle, Idaho 83616

[ ☒ ] U. S. Mail  
Postage Prepaid  
[ ☐ ] Hand Delivery  
[ ☐ ] Overnight Mail  
[ ☒ ] Facsimile (208) 685-2355


**NOTICE OF AMENDED CROSS-APPEAL - 4**

Stephane Morse  
Court Reporter for Judge Nye  
P.O. Box 4165  
Pocatello, Idaho 83205

☒ U. S. Mail  
Postage Prepaid  
☒ Hand Delivery  
☐ Overnight Mail  
☐ Facsimile

  
\_\_\_\_\_  
JOHN A. BAILEY, JR.

JOHN C. LYNN  
Attorney at Law  
776 E. Riverside Dr.  
Suite 200  
Eagle, ID 83616  
Telephone: 208.685.2333  
Facsimile: 208.685.2355

FILED  
BANNOCK COUNTY  
CLERK OF THE COURT  
2010 APR 26 AM 10:07  
BY   
DEPUTY CLERK

Attorney for Appellant

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF BANNOCK**

HABIB SADID, an individual,	)	
	)	CASE NO. CV-2008-3942-OC
	)	
Plaintiff/Appellant,	)	AMENDED
	)	NOTICE OF APPEAL
vs.	)	
	)	
	)	
IDAHO STATE UNIVERSITY,	)	
ROBERT K. WHARTON, JACK	)	
KUNZE, MICHAEL JAY	)	
LINEBERRY, MANOOCHER	)	
ZOGHI, RICHARD JACOBSEN,	)	
GARY OLSON, ARTHUR VAILAS	)	
and JOHN/JANE DOES I through	)	
X, whose true identities are presently	)	
unknown,	)	
Defendants/Respondents.	)	
_____	)	

TO: THE ABOVE-NAMED RESPONDENTS, STATE OF IDAHO, AND  
ITS ATTORNEY:

NOTICE IS HEREBY GIVEN THAT:

1. That the above-named Appellant, HABIB SADID, by and through his attorney of record, JOHN C. LYNN, appeals against the above-named Respondents to the Idaho Supreme Court from the DECISION ON MOTION FOR RECONSIDERATION, entered in the above-entitled action on February 24, 2010, and the DECISION ON MOTION FOR SUMMARY JUDGMENT, entered in the above-entitled action on December 18, 2009, Honorable David C. Nye presiding.

2. That the Appellant has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1), I.A.R.

3. Preliminary statement of issues on appeal:

Did the trial court improperly dismiss Appellant's claims of (1) Deprivation of Constitutional Rights and (2) Breach of Contract?

4. No order remains in effect sealing any portion of the record.

5. (a) Is a reporter's transcript requested? Yes.

(b) The Appellant requests the preparation of the following portions of the reporter's transcript in hard copy:

(i) The hearing upon Respondent's MOTION FOR SUMMARY JUDGMENT, held on November 2, 2010;

(ii) The hearing upon Appellant's MOTION FOR RECONSIDERATION, held on January 19, 2010.

6. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

(a) Appellant's and Respondents' Affidavits and Briefing filed upon Respondents' MOTION FOR SUMMARY JUDGMENT, together with all exhibits submitted therewith, designated on the Clerk's registry as follows:

- (1) Motion for Summary Judgment filed 9/14/09;
- (2) Memorandum in Support of Motion filed 9/14/09;
- (3) Affidavit of John Bailey in Support of Motion filed 9/14/09;
- (4) Affidavit of Plaintiff in Opposition to Motion filed 10/30/09;
- (5) Plaintiff's Memorandum in Opposition to Motion filed 10/30/09;
- (6) Reply Affidavit of John Bailey re: Motion filed 10/30/09;
- (7) Affidavit of Counsel in Opposition to Defs Motion filed 10/30/09;
- (8) Reply Memorandum re: Motion filed 12/30/09.

(b) Appellant's and Respondents' Affidavits and Briefing filed upon Appellant's MOTION FOR RECONSIDERATION filed 12/24/09 together with all exhibits submitted therewith, designated on the Clerk's registry as follows:

- (1) Plaintiff's Motion for Reconsideration filed 12/24/09;
- (2) Affidavit of Plaintiff in Support of Motion filed 12/30/09;
- (3) Memorandum in Support of Motion filed 1/5/10;
- (4) Defs Memorandum in Opposition to Motion filed 1/11/10;
- (5) Affidavit of John Bailey in Opposition to Motion filed 1/12/10;
- (6) Plaintiff's Reply Memorandum in Support of Motion filed  
1/15/10;

7. The Appellant requests the following documents admitted as exhibits to be copied and sent to the Supreme Court:

(a) All exhibits attached to Plaintiff's COMPLAINT and FIRST AMENDED COMPLAINT;

(b) All exhibits attached to the Affidavits and Briefing referenced in paragraph 6(a) and 6(b) above.

8. I hereby certify:

(a) That a copy of this notice of appeal has been served on the court reporter.

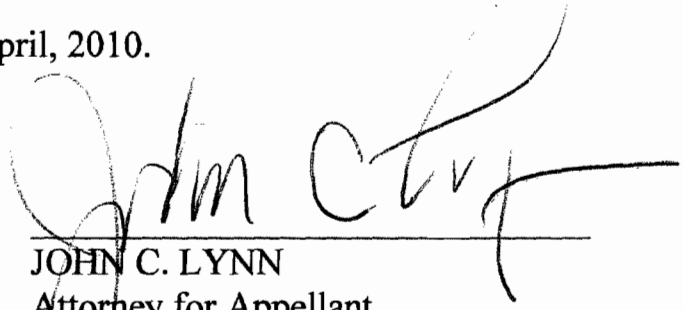
(b) That the Clerk of the District Court has been paid the estimated fee for preparation of the reporter's transcript.

(c) That the estimated fee for the preparation of the Clerk's record has been paid.

(d) That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20 and the Attorney General.

DATED This 23 day of April, 2010.



JOHN C. LYNN  
Attorney for Appellant

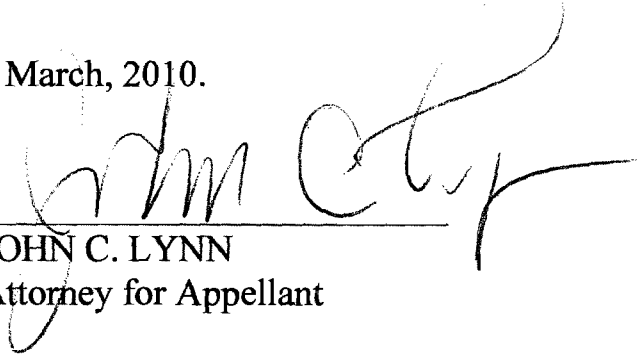
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That on this 23 day of April, 2010, I served  
a true and correct copy of the foregoing document, by depositing the same in  
the US Mail, postage prepaid, to the following:

John A. Bailey  
Racine, Olson, Nye, Budge & Bailey, Chtd.  
P. O. Box 1391  
Pocatello, ID 83204

Office of the Attorney General  
State of Idaho  
700 W. State St.  
P. O. Box 83720  
Boise, ID 83720-0010

DATED This 23 day of March, 2010.

  
\_\_\_\_\_  
JOHN C. LYNN  
Attorney for Appellant



IN THE DISTRICT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BANNOCK

HABIB SADID, an individual,

Plaintiff/  
Appellant/  
Cross Respondent,

vs.

IDAHO STATE UNIVERSITY,  
ROBERT WHARTON, JACK KUNZE,  
MICHAEL JAY LINEBERRY,  
MANOOCHHEHR ZOGHI, RICHARD  
JACOBSEN, GARY OLSON, ARTHUR  
VAILAS and JOHN/JANE DOES I  
through X, whose true identities  
are presently unknown,

Defendants/  
Respondents/  
Cross Appellants.

NOTICE  
OF  
LODGING

**DOCKET NO. 37563-2010**

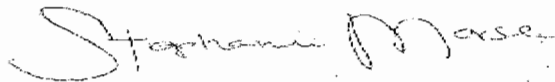
The following transcript(s) in the above-entitled appeal consisting of  
155 pages was lodged with the District Court Clerk on  
May 15th, 2010:

1. Motion to Amend held October 5, 2009
2. Motion for Summary Judgment held November 2, 2009
3. Motion for Reconsideration held January 19, 2010

via:

- ( x ) Hand-Delivery  
( ) U.S. Mail

DATED this 15<sup>th</sup> Day of May, 2010



**STEPHANIE MORSE, RPR, CSR**

cc: Karel Lehrman and Klondy Loertscher--Idaho Supreme Court/Court of Appeals  
\*Electronic copy of transcript sent to: Diane Cano at dianec@bannockcounty.us

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

HABIB SADID, an individual,	)	
	)	
Plaintiff/Appellant,	)	Supreme Court No. 37563-2010
	)	
v.	)	
	)	CLERK'S CERTIFICATE
IDAHO STATE UNIVERSITY,	)	
ROBERT WHARTON, JACK	)	
KUNZE, MICHAEL JAY	)	
LINEBERRY, MANOOCHER	)	
AOGHI, RICHARD JACOBSEN, GARY	)	
OLSON, AUTHUR VAILAS and	)	
JOHN/JANE DOES I through X, whose	)	
True identities are presently unknown,	)	
	)	
Defendants/Respondents,	)	
	)	
	)	

---

I, DALE HATCH, Clerk of the District Court of the Sixth Judicial District, of the State of Idaho, in and for the County of Bannock, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true, full, and correct record of the pleadings and documents as are automatically required under Rule 28 of the Idaho appellate Rules.

I do further certify that there were no exhibits marked for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Pocatello, Idaho, this 22 day of April, 2010.

CLERK'S CERTIFICATE

(Seal)

DALE HATCH,  
Clerk of the District Court  
Bannock County, Idaho Supreme Court

By 

Deputy Clerk

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

HABIB SADID, an individual,	)	
	)	
Plaintiff/Appellant,	)	Supreme Court No. 37563-2010
	)	
v.	)	
	)	CERTIFICATE OF SERVICE
IDAHO STATE UNIVERSITY,	)	
ROBERT WHARTON, JACK	)	
KUNZE, MICHAEL JAY	)	
LINEBERRY, MANOOCHHR	)	
AOGHI, RICHARD JACOBSEN, GARY	)	
OLSON, AUTHUR VAILAS and	)	
JOHN/JANE DOES I through X, whose	)	
True identities are presently unknown,	)	
	)	
Defendants/Respondents,	)	
	)	
	)	

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I, DALE HATCH, Clerk of the District Court of the Sixth Judicial District, of  
the State of Idaho, in and for the County of Bannock, do hereby certify that I  
have personally served or mailed, by United States mail, one copy of the  
REPORTER'S TRANSCRIPT and CLERK'S RECORD to each of the Attorneys of  
Record in this cause as follows:

For Appellant:

**John C. Lynn  
Attorney at Law  
776 E. Riverside Dr.  
Suite 200  
Eagle, Idaho 83616**

**Sam Johnson  
Johnson & Monteleone, LLP  
405 South Eight Street, Suite 250  
Boise, Idaho 83702**

For Respondent:

**John A. Bailey, Jr.  
Racine, Olson, Nye, Budge & Bailey, Chartered  
P.O. Box 1391  
Pocatello, Idaho 83204-1391**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal  
of said Court at Pocatello, Idaho, this 18 day of May, 2010.

(Seal)

DALE HATCH,  
Clerk of the District Court  
Bannock County, Idaho Supreme Court

By   
Deputy Clerk